Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

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[*Latin ed. p. 1*]

ACTS OF THE HOLY SEE, A COMPENDIUM CONVENIENTLY COMPILED AND ILLUSTRATED THROUGH THE STUDY AND CARE OF JOSEPH PENNACCHI AND HOTORIO PIAZZELLI. These are the legal and more solemn acts emanating directly from the Supreme Roman Pontiff; among those which can be made public under law, whether they are Decrees, Instructions, Responses, or other matters; especially, expositions and resolutions of cases from various Sacred Congregations of Cardinals, carefully compiled to contribute to the accurate understanding and observance of ecclesiastical law; and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of existing law; for the benefit of those who diligently study the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the Lord's vineyard.

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[*Latin ed. p. 3*]

LETTERS from His Holiness, Pope Leo XIII, to the president and members of the Academy of St. Thomas, established in the Seminary of Parma.

LEO XIII, Pope. To Our beloved sons, greetings and the Apostolic Blessing. While we lament the corrupting influences of philosophical doctrines, which for centuries have gradually undermined other disciplines and have been perverted to the detriment of life itself, and which, through the force of errors and the disturbances of factions, agitate and drive our society towards dissolution; we rejoice with you, Our beloved sons, that you have so zealously devoted yourselves to restoring those principles which alone can effectively contribute to the defense of religion, to the repelling of the darts and snares of sophistry, to the illumination of truth, and, through these means, to the reform of morals and the restoration of order. Indeed, you have chosen a most suitable leader for so important a task, one whose exceptional sanctity is combined with the strength of his intellect and his extraordinary human understanding, a quality that has earned him the

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praise of the Angelic Doctor.

In this regard, besides the very nature of your undertaking and your dedicated study, what delights Us most is that you have resolved to draw your documents solely from that source of wisdom which We have openly designated; never from those streams, however they may claim to originate from the same source, which do not flow with wholesome waters. For there are many who, while cleverly attempting to twist the mind of St. Thomas to their own purposes, or who seek to compose their own views in such a way that they appear to resemble his teachings, and who, thus adorned, boast of being disciples of the holy Doctor, from whose doctrine they are utterly different; your discernment and the firmness of your will are evidence to Us that you will not only avoid being deceived by such tricks, but that you will also expose them, so that you may also protect others from the danger of deception.

Therefore, we pray that others may join your assembly, so that, united with the efforts of many, you may more quickly, easily, and completely achieve the desired goal for the benefit of both religious and civil affairs. May the divine favor and Our paternal benevolence be a witness to you, and may the Apostolic Blessing, which We impart to each of you, Our beloved sons, and to your entire Academy, be a constant source of strength.

Given at Rome, at St. Peter's, on this 21st day of June, in the year 1880, in the third year of Our pontificate.

[*Latin ed. p. 4*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF PATRIMONY, August 23, 1879. SUMMARY OF THE CASE. By a public instrument drawn up by Anthony Casadei, a Cleric, in the year 1855, the Holy Patrimony was established. Since said Anthony, the Cleric, from the day on which he was to be ordained to the Order of Subdeacon, promised to pay interest on a loan of 720 florins, guaranteeing the sum of 36 florins, as security for the Holy Patrimony, until provision was made. The Lords Casadei and the Cleric C. affirm that no agreement of a simoniacal nature existed between them, either in this matter or in others. However, among these things, the Cleric C. privately promised his uncles that he would pay to Anthony Casadei, the recipient and stipulator for himself and his own, the aforementioned interest on the sum of 720 florins, as soon as it was collected by the Cleric C. Thus, the Holy Patrimony established should not have been affected by any loss or expense. The Cleric did not receive any portion of the interest from that day; however, in the year 1862, Anthony, having entered the world, demanded from the executor of the will of the Casadei family, the interest accrued from the date of the establishment of the Patrimony. The representative of the Casadei inheritance, bearing this with a heavy heart, and after the Cleric insisted further, presented a supplication to the S. C. C., earnestly praying that it would deign to de-

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clare that the establishment of this Patrimony was of no value, since it was established solely for the purpose of providing a title for the Cleric.

[*Latin ed. p. 5*]

The sacred patrimony should be established; or, it should be arranged that Cleric C. be released from all obligations concerning the patrimony of Anthony Casadei; and that the same Cleric should receive the ecclesiastical pension of 24 scudi, as well as a profitable office. The Bishop, when asked for his opinion and vote regarding this matter, responded: that he did not believe the patrimony to be a sham; for a certain income was established by a regular instrument, determined upon a specific property, without any reservation. Furthermore, the founder of the sacred patrimony obligated himself and his heirs to ensure that Cleric C. remained in possession of this property. From these statements and proofs, the Bishop added that it could not be denied that the Cleric had promised that he would never demand any fruits [from the patrimony]. Nor did he consider the obligation, which is said to have been entered into between Casadei and the Cleric's uncle, to be valid; for this second obligation does not invalidate the first, but rather confirms it. The defender of the Casadei inheritance argues that the constitution of the sacred patrimony was fictitious, and therefore is not to be relinquished. He seeks to demonstrate this from the facts of the case: for the validity and efficacy of the instrument by which the patrimony was established were undermined by an agreement, which preceded the instrument itself, and was recorded in writing and signed by the same witnesses. The sacred patrimony was established only three days before the ordination; so that the prescribed publications could not have been made during the solemnities of Mass, nor was it certain whether the money designated for the patrimony was free and available. No mortgage was recorded on the properties of Casadei, nor was any other action taken to expose any frauds, if they existed. Furthermore, if all of these things are considered together with the conduct of the Cleric, who, only after the death of the founder, sought to collect the fruits from the date of the establishment of the patrimony, and if it is also noted that in the inventory of the Casadei inheritance for the year 1862, no credit in favor of Cleric C. was recorded, as reported by the Chancellor of the Prefecture, then the strongest conjectures are held, which entirely suggest the VALIDITY OF THE CASADEI INHERITANCE.

[*Latin ed. p. 6*]

6. The "sacred" patrimony appears to have been a fictitious creation. To declare a contract simulated, it is not necessary to have such exact proof, but conjectures, indications, and presumptions suffice [L. Non §. A; Bald, in consil. Sii. prope fin. col. 5.; Covarr. in lib. S. var. resol, cap. 7.; Marta vot. 54. n. 9. seqq.]; because simulations are carried out secretly, and one trusts

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in the other. Therefore, Salyc. in L. Empi. col. final. states: "It is more valid when two witnesses are sufficient to prove the simulation"; and Afflictus, citing Marta in the aforementioned place, n* i, teaches that the simulation of a contract can be proven by a single witness. Indeed, not two, but three witnesses are presented in the records. This is further confirmed by the very epoch, which occurred between the uncle of Clericus and Anthony Casadei, in which it is read that Anthony Casadei was induced to establish the patrimony by an obligation assumed from the uncle of Clericus, namely, to return the fruits received from the money contributed to the sacred patrimony. Therefore, after carefully considering all things, it does not seem doubtful that the constitution of the patrimony was simulated and fictitious. It does not help to argue that he who donates the simulated patrimony is bound to pay the agreed-upon fruits to Clericus. The testamentary executor adds: "The sacred canons seem to indicate that when fraud is present in the one who establishes the sacred patrimony, he deceives the Bishop and the Clericus, showing them a patrimony that is null and fictitious, as if it were true and legitimate." In this case, the opposite occurred, for without the deceptions of Clericus, neither the Bishop would have been deceived, nor would Anthony Casadei have established an empty patrimony. For, if he were a good and religious man, he could never have been induced to this simulation, which is forbidden by the sacred canons, knowing this. However, in the hypothesis that the constitution of the patrimony still exists in its own right, it is nevertheless maintained that its resolution is appropriate. Indeed, from the narration of the facts, it is clear that the most religious man Casadei assigned 36 scudi to Clericus C. for the title of the sacred patrimony, until provision was made. Indeed, in law, the word "until" creates a condition [Leg.].

[*Latin ed. p. 7*]

SECTION 7. Concerning the Patrimony. [References to Canon Law: *ff. de Legat. 3*]. It seems impossible to doubt that the constitution of this patrimony was established under certain conditions. Therefore, since it has been established in confession that Anthony of Clairac obtained a pension of 24 scudi for the parish and a profitable office, it cannot be doubted that, once the condition under which the assignment was made has been fulfilled, the patrimony belongs to the heirs of the assignor. This is all the more to be maintained, because the assignment of the patrimony took place when the cleric was in urgent need. The promise, however, ceases to be valid because of poverty, and ceases with the poverty, *L. cura §*. [References to Canon Law: *Deficientem ff., de mutier, et honorib. et L. Ab his honoribus §. auctis ff. de vocat, et excusat, muner. C*]. Nevertheless, despite these considerations, it seems that this patrimony was validly established, and indeed, it is demonstrated that it still exists in its own right. Certainly, the constitution of the sacred patrimony was real, both by presumption and

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by actions. For it is not to be presumed that religious and upright men, as the parties claim, intended to commit this fraud, and to perpetrate it with impunity against ecclesiastical laws. It is also not to be presumed that Anthony of Clairac, a cleric distinguished by his morals and religion, as the presented documents show, intended to deceive someone in order to incur penalties prescribed by canon law. Finally, it is not to be presumed that he was so imprudent as to insist on this course of action if he were not certain in his own conscience; rather, he acted under the condition that he could establish the patrimony from his own property, as required by the synodal laws. All bitterness on this matter should be dispelled if one carefully examines the instrument of the constitution of the sacred patrimony. For not only did Anthony Casadei intend to establish it, but he also took care that the fruits could truly and effectively be demanded from Anthony of Clairac. Therefore, since everything in the instrument is consistent with the intention of the one who established it, it cannot be concluded that any fraud was committed, nor is anyone presumed to have committed it without advantage and utility, much less with the detriment that is now being alleged, as Gratian rightly observes, in the *Disceptatio*, chapter 278, number 1. This is further demonstrated by the reasoning of the actions of the CLERIC OF CLAIRAC.

[*Latin ed. p. 8*]

As testamentary guardian of the sacred patrimony, he declared that the inheritance was burdened with the obligations of the sacred patrimony; and he himself admits that it is subject to a mortgage, and he requests the Sacred Congregation of the Council to authorize any cleric to dissolve the lien on the patrimony of Casadei. This does not disturb what is read in the private archives. For it is established in law that what is done between others does not affect a third party, *L. De unoquoque*, ff. *De reiudicat*. The Rota in Fulginata, Damnorum, 3 July 1815, before Caesar dei Leonibus. Indeed, from the aforementioned words, the constitution of the sacred patrimony receives confirmation. It has been determined that the aforementioned words indicate a declaration. However, the principal obligation must precede the declaration; for without its principal, an accessory cannot exist, nor, without that which strengthens it, can a confirmation be conceived. Therefore, since Anthony Casadei received the declaration from the uncle of the cleric, promising it for the collection of the fruits, it is clear that the constitution of the patrimony was completely valid in all respects. In vain is the effort made to argue that the constitution of the patrimony should be considered null and void due to the lack of formalities that should have intervened in the proceedings of the synodal laws. For, in the first place, it is not permitted to any of the contracting parties to allege this nullity, but only to that one in whose favor the formalities were performed, who, on account of the same defect, may allege the nullity of the

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contract, *Tenzón, ad Stat. Urb.*, cap. 15, no. 51; Rota in *Recent*, decis. 595, no. 9, par. 13. Therefore, since the formalities were not performed in favor of Casadei, the defender of the inheritance cannot, on account of them, allege the nullity of the patrimony. Furthermore, since, with the authorization of the Most Reverend Ordinary, a waiver was made from the formalities. Moreover, the adversary does not prove any valid deceit or fraud in the constitution of the patrimony from the fact that the cleric refrained from requesting the money. For the creditor, knowing that his right is safe, inflicts no prejudice upon himself by asking or not asking, Rota in *Albanen*, *Dotis et fructuum*, 23 February 175$, §. 12, *con*. Furthermore, because the cleric stated that he was unable to collect the fruits, and because he received more and more abundant offerings and alms for Masses from Casadei each year, and because, from the words...

[*Latin ed. p. 9*]

OF THE SACRED PATRIMONY 9, Casadei himself hoped that something from his inheritance might be available to him. But having lost this hope, as the Cleric wished, he sought to recover the fruits of the sacred patrimony assigned to him. "The statutes, by the validity of the constitution of the sacred patrimony, clearly indicate that such a resolution cannot have place in this situation." Since the condition is not fulfilled, as he himself notes, the Bishop cannot be considered sufficiently provided for, given the perpetual annual pension of 24 scudi, which he received from the year 1872 for the parish, and the fact that, according to the established order, an income of 36 scudi is provided by the Diocesan Synod (1). This sum is by no means sufficient to be supplemented by anything other than what he receives from the fruit-bearing office. For this office, being subject to removal at will, is not sufficient to establish the title of ordination, which must consist of something certain and stable, as is shown in several resolutions of the Sacred Congregation of the Council in the case of De-Chiapas, concerning titles of Holy Orders, of June 21st last, §. Concilium and following. Therefore, having considered both of these points, the Most Eminent Cardinals, with wisdom and prudence, decided what response they should give to the DOUBT I. In other words, does the constitution of the sacred patrimony contain any nullity? And, to the extent that it is negative, does such a resolution have place in this case? The Sacred Congregation, after deliberation on August 23, 1879, responded: The pension of 24 scudi must be supplemented with a dispensation regarding the integrity of the tax, with the aforementioned words, to the Most Reverend (2). RESOLUTION. (1) It must not be overlooked that the synodal tax of the place where one is ordained must be taken into consideration. Therefore, if a Cleric who is a Roman is to be ordained with a benefice established in the diocese of Florence, the tax established for the Romans must be considered, not the tax of the diocese of Florence. This is declared by the Sacred Office

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in Alatri on July 9, 1701, and is prescribed by the Council of Morla, 1725, Title 6, chapter 4. (2) Regarding the practical deductions concerning sacred patrimonies, see the Acts of the Holy See, Volume X, page 173. Although the Sacred Congregation did not directly give a response to the first doubt,

[*Latin ed. p. 10*]

10 OF PAROCHIAL RIGHTS. July 26, 1879. SUMMARY OF FACTS. For many centuries, the distinguished Parish Church of the Holy Martyrs Firmi and Rustici, in the town of C., within the diocese, was governed by four parish priests, commonly called "portioners," who exercised pastoral care in its entirety, although not without disputes and lawsuits, which often ended in open scandals. This church was elevated to the status of a Collegiate Church in the year 1617, and four parish priests were then designated as "Canon Rectors." However, in the year 1750, the senior parish priest, designated as the Archpriest, was found to be in possession, a situation that was accepted by all his successors; thus, the senior priest was the Archpriest, while the others were called Canon Rectors. In the year 1804, matters changed due to the action of civil authority, which decreed that only one parish priest should exist in the future, while the other three would assist him as Vicars. Furthermore, the Bishop reported that the Collegiate Church had been converted into a parish church, with the approval of the civil authorities. Although it is unknown whether this change received the approval of the Holy See, it appears that, from the year 1804 to the present, this parish has been a well-established entity with a solid foundation. This is also evident from the fact that an agreement was made regarding the restoration of revenues, so that the cleric would receive them. It should be noted that, according to Benedict XIV, *Inst.* 26, n. 14, "those properties are alien to 'sacred' sanctions, in which an express or tacit agreement intervenes... so that the ordained minister shall not withdraw any fruits from them, or only a part of them," even if public documents state otherwise. And the same author, in the same place, n. 18, continues: "Indeed, if the ordained minister has acted before a Judge, he will certainly obtain the fruits from the property entrusted to him, even if contrary agreements and even oaths have intervened." The cleric did not sign any agreement on this matter, nor did he say anything openly that could be used to argue that he had committed a sin.

[*Latin ed. p. 11*]

OF PAROCHIAL RIGHTS: Public opinion held that there was only one Parish Priest; although some Vicars have exercised, and still exercise, acts of parochial authority. Whether this came to them through the tacit consent of the Archpriest, or rather through the effect of long-standing custom, it is impossible to determine, since all things are shrouded in obscurity. The only certain thing is that the Archpriest and three Vicars bore the burden of

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Masses for the people and preaching, as they had previously done together; all burdens and emoluments were divided in equal portions, and in the aforementioned vacancy of one of the Vicars, a spiritual administrator was appointed, as is customary in Parishes. Things were thus, when two of these Vicars, taking advantage of an opportunity presented by a resolution issued by the Archpriest, which increasingly restricted their power, especially concerning assistance with marriages, in February of the year 1877, fled to the Bishop, offering a suppliant letter, requesting that they be restored to their full dignity and parochial authority, as before the year 1804; and that the act of suppression had been carried out by the force of civil power. The Ordinary, seeing the question involved great difficulties, refrained from rendering a judgment: but he exerted all his efforts to ensure that the Apostolic See would remedy what had been done in the past, which was contrary to the sacred canons, and that only one Parish Priest would be appointed, in order to prevent future disputes and lawsuits. THE RIGHTS OF VICARS: In order that all ambiguity might be eliminated, they maintain that they never relinquished the right to govern the Parish in its entirety, and they inquire whether they are to be considered to retain that dignity and power. The parochial right of Vicars is evident, whether from ancient documents, or from public titles, or from parochial codes, or from the testimony of former Parish Priests. There exist several founding documents, *bullae*, which all demonstrate the parochial nature and dignity of the Vicars. However, the founding document itself is entirely lacking, and it could not be found after diligent searching.

[*Latin ed. p. 12*]

12 OF PAROCHIAL RIGHTS. Through an unforgettable and never-interrupted custom, the right of the Vicar contends to exist, and, above all, through attestations of the Curia. Nor can it be objected that, under a changed name, the nature of the parish curate has been altered. Indeed, that first act, which conferred the title of parochus upon a single Archpriest, possessed only civil authority, and changed nothing concerning the care of souls. Moreover, since this act has not only not interfered with this up to now, but the care of souls has always been entrusted to four priests, without anything being altered, and is even presently so administered, it clearly demonstrates that ecclesiastical authority intended to give civil law force in matters concerning the effects of law. Nor does it matter that the right of parochiality is held in common by several. For it is neither new nor unusual in law, nor in practice, for the right of parochiality to be held in common, especially if a reasonable and legitimate reason, as in the present case, demands it. Pitonius, in his constitutions and decisions for parishes, Nos. 1404 and following, June 4, 1618; nor does the Sacred Congregation of Councils think otherwise, as is evident in the documents concerning Tiburtina, March 25 and July 9, 1757, and in Brixien, July 15, 1785; and in

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Aretina, December 15 of the same year. Even the Council of Trent does not object to cumulative care, but admits and presupposes it, as can be seen in chapter 18, session 24, concerning Reforms. And this is all the more to be admitted when, as in the case, there are several priests, but they form and constitute one person. Then, indeed, the care of souls, although actually entrusted to each individually, remains in its essence with all in common, because plurality cannot exist in one body, in a college, as Lotter teaches in *de re benef.*, book 1, question 20, Nos. 116 and following, and in Nos. 442 and following. Rota decis., 225, paragraph 19, volume 1, Record, Nos. 2 and following. As for custom, several Vicars present nomination bulls, from which it is clearly evident how the parish has always been administered, according to what has recently been presented. In these, whenever a priest is designated by any name to the care of souls in the town of C,

[*Latin ed. p. 13*]

The rights pertaining to the parish [of Bulla] have always been referred to as being exercised by "the pastors from one of the four parochial divisions," and no distinction appears to exist among these pastors regarding their benefices. Furthermore, although civil authority may have changed the name of the pastor, it nonetheless stipulated that the revenues of the parish must be paid to the four pastors. The Episcopal curia, which is not particularly favorable to vicars, declared that there are four pastors, and that they act as one and the same person, exercising administration jointly. And the diocesan Bishop, during a pastoral visitation in the year 1599, stated that there are four pastors, each taking turns in administering the parish. However, the vicars claim to perform even greater duties. Parochial records are cited, which demonstrate the truth, and from these it is clear that not only have there always been four pastors equal in dignity within the Church of C., but also that the ancient pastor, Bartholomew of Foresti, in the year 1750, was the first to assume the title of Archpriest, a practice which was subsequently followed by his successors. Speaking now of the attestations of the Curia of C., they recount everything that these records contain regarding the vicars. For they testify that there have always been four pastors in the Church of C. Moreover, they state that this is most clearly confirmed in a certain document. In the year 1816, Homobonus Offredi, the Bishop of C., having observed that the number of the faithful had increased to such an extent that it was impossible for one pastor to adequately care for the souls, established a vicariate and instructed the new vicar: "That you must diligently and faithfully perform the duties of caring for souls, and in support of the aforementioned pastors of the Parochial Church of Saints Firminus and Rusticus of C." Therefore, they do not argue in favor of the archpriest having any special legal standing, as secular custom itself demonstrates. The pastors, cumulatively, have always fulfilled the duties of their office, and at the same time, have equally shared

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the emoluments and burdens, without contradiction. However, a custom that has lasted for more than a century acquires, by its very nature, a value of a true and legitimate title and privilege, and with this, it can claim a title to a better world. [References to legal codes and other documents are listed here, but are not translated.]

[*Latin ed. p. 14*]

14 OF PAROCHIAL RIGHTS, decision 677, number 4, paragraph S; decision 489, number 2, paragraph 4, top; and elsewhere throughout. Therefore, De Luca, in book 7, on alienations, section 6, states: "The prescription alone is sufficient, notwithstanding the modern constitution of Urban VIII, because of the possibility of alleging any title for a better outcome." He gives the reason for this in book 15, section 21, on judgments, number 50, with these words: "For all domains and goods, or rights, which have been possessed from the most ancient and unmemorable times in a well-defined manner, undoubtedly presuppose some principle." Therefore, it must be concluded that the observance of such a long period is guaranteed to Vicars, not only in an interpretative and presumptive sense, but also in a prescriptive sense. Furthermore, if one adds to this the celebration of Mass for the people, which all pastors perform, the rights pertaining to the parochial tithes, the administration of the archives, and the customary collection of emoluments in both cases, the right of the pastor becomes more clearly apparent, and they strongly wonder how the Archpriest can assert that the care of souls pertains to him "exclusively," when this only serves to demonstrate the true and proper parochiality, as affirmed by the Rota in Records, decision 225, paragraph 19, top, number 8 and following. Moreover, they acknowledge that the care of souls certainly pertains to the Archpriest, but cumulatively and not exclusively. When the Vicars have demonstrated the parochial nature of their office, they proceed to the second question, namely, that the Archpriest claims to be the only pastor, and that only to him are marriages reserved. However, the Vicars state that the Archpriest cannot defend this either in law or in fact. For, given the plurality of pastors, and therefore, given the equality of jurisdiction and power in all things, who could deny the right of all pastors to administer all sacraments (none excepted), which is an essential part of the pastoral office? Therefore, it is clearly established in law that only the pastor is validly and legitimately present at marriages, as affirmed by the Council of Trent in chapter 1, session 24, on the Reform of Matrimony, and by Bouix, on the pastor, paragraph 4, section 2, page 462: and therefore, if there are several pastors who are equal in dignity, the right to be present will belong to all of them. Just as there is no escape for the Archpriest in law.

[*Latin ed. p. 15*]

REGARDING PAROCHIAL RIGHTS, and not merely in a series of

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events. For all matters, the Bulls of the Bishop Offredi are sufficient, which establish a coadjutor vicariate and confer certain duties upon certain priests, granting them the faculty of administering the sacraments, but with these words added: "and except for the sacrament of marriage, to whose celebration you must especially assign one of the aforementioned vicars (that is, the vicars), and also except for those matters which concern marriage, either before or after the ceremony, and we expressly declare and decree that all of these things are reserved to the aforementioned RR. Vicars." Therefore, the vicars state that their right is clearly established, a right which the Bishop himself recognized as early as 1816, and not one which he created. Nor has anything happened subsequently to alter this, as is demonstrated by the testimonies of their predecessors. Thus, with the general right to assist at marriages established, the vicars believe that there is room for discussion regarding certain exceptions. Very rarely does one find in the documents a word that seems to contradict the vicars, granting them the faculty to assist, provided they have first received a delegation from the Archpriest. However, the vicars state that this in no way harms them, and that since only ecclesiastical authority, which established the curacies, could have diminished the power previously granted, and that they do not believe that this has been done. Therefore, since the existence of the right is absolutely demonstrated, and no contradictory actions are found, they believe that such exceptions should not be given any weight. Moreover, even now, the vicars append their signature, with the words, "as the delegate of the Archpriest," which, they believe, should be done out of prudence. For parochial codes are subject to investigation by civil authorities, which are opposed to the plurality of parishes. RIGHTS OF THE ARCHPRIEST. These, however, are contrary to the sanction of the canons, since the canons absolutely reject the plurality of parishes. This is clearly evident both from the text in chapter 45 concerning prebends and dignities, in which it is stated that one church must have only one priest; and also from chapter 8 of the same title, which deals with minor ecclesiastical benefices, among which the parochial benefice must certainly be included. These legal...

[*Latin ed. p. 16*]

16 The canonical regulations concerning parochial rights, which the Council of Trent had revived and which it established with its authority, are these. Indeed, the Fathers of Trent, in order to prevent the abuses and scandals arising from this plurality of pastors, entrusted these matters to the care and concern of the Bishops, as stated in Session 24, Chapter 15, concerning Reforms: that each people should be assigned their own pastor, and a particular parish priest who can know them, and from whom alone they may lawfully receive the sacraments. Since this is the case, all doctors have maintained this doctrine with one voice and with

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strong arguments: among whom it is sufficient to cite Gonzalez in Chapter 8 on the subject of stipends and dignity, Pichler in the title concerning the parish, in the discussion on the Council of Trent, number 35 and following, Barbosa in Book 4 on the office and power of the parish priest, number 43 and following. For the plurality of parish priests not only contradicts the concept and nature of authority, but it usually brings with it serious inconveniences, so that the seeds of lawsuits are sown. Hence it often happens that the sheep hear the voice of no one, and are therefore obliged to obey many pastors. Therefore, in the examination of the aforementioned law, the Sacred Congregation rejected the plurality of parish priests, paying no regard to Constitutions Capitular, nor to custom, nor to any other rights that were alleged to the contrary, as can be seen in the document *Iura Parochialis* of Orte, April 1721, and especially in the document *Iura Parochialia* of Brixen, July 24, 1775, and in the document *Iura Parochialis* of Arezzo, December 11, 1775. This doctrine, moreover, seems to be all the more to be adhered to, because for more than seventy years, vicars have exercised the care of souls, constantly exhibiting their dependence on the Archpriest; and because otherwise, disputes and contentions among the parish priests would be renewed, which often occurred at that time when the care of souls was exercised by many pastors, as testified by the Bishop in his information to the Sacred Congregation. Nor is it reasonable, says the Archpriest, to say that the change of 1804 should not be taken into account, because it was carried out only by civil authority, without the approval of the Church. For it has not been proven that the consent of the Church was lacking. But in order for any act to be declared null, it must first be proven...

[*Latin ed. p. 17*]

SECTION 17 OF THE PAROCHIAL LAWS states that, as it is alleged, something truly happened. However, lacking such proof, it is futile to argue for the nullity of the act; for it is well known in law that actions are not presumed, but must be demonstrated by evidence in order to have effect, as stated in Leg. 1 of the Code of Civil Procedure. The assertion of the Code of Non-pecuniary Matters, number [unspecified], the decision of the Rota before Janora, number 48, paragraph 10, and the decision of Cardinal Marini, number 422, paragraph 4, are relevant. Furthermore, the Archpriest argues that, considering all the circumstances, it is more likely that ecclesiastical sanction was present in this matter. He argues this from the constant and unwavering silence, not only of the priests who, in subsequent times, were called and appointed to administer the care of souls with vicarious authority, but also of those who have witnessed the native parochial authority being diminished by the power of the laity. He argues from the silence of the Bishop, who would have permitted such an injury to be done to his and the pontifical authority, and who would not have

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raised his voice against the abuses of the lay power. He argues from the public opinion that prevailed in the diocese, as the Bishop reports, namely that there has been only one parish priest since the year 1804, and that all other workers must depend on him under the title of Vicars. Finally, he argues from the long period of time that has elapsed since the year 1804. Indeed, it is established in law that a period of 30 years carries such weight that it can lead to the presumption of an Apostolic approval. See, for example, the Rota in Decision 50, number 42, paragraph 44, and Decision 694, number 5, paragraph 4. This presumption is especially strong when there are certain and positive acts that demonstrate such observance. In this case, however, since we are not dealing with 30 years, but with 75 years, everyone can easily understand that there is no room for doubt that ecclesiastical authority was present. Otherwise, the Archpriest concludes, we must consider that the matter in question is doubtful; and in cases of doubt, it is always presumed that the correct action was taken, which is the action that ought to have been performed. Furthermore, both ancient and modern law, and the constant practice of the Sacred Congregation of the Council, establish that there must be only one pastor in any parish, and that any other collaborators, if there are any, must exercise parochial jurisdiction dependently on him. (Acia, Vol. XIII, page [unspecified], column XLV, number 2).

[*Latin ed. p. 18*]

18 The rights of the parish are maintained, and the second Vicar endeavors to assert his authority regarding marriages celebrated within his parish, both those that are valid and those that are not. Indeed, it is clear from the decrees of Trent, in Session 34, chapter 4, concerning reforms, that only the parish priest, or someone specifically delegated by him, can validly and legitimately officiate at the celebration of marriages. With these things established, it was left to the Judges to decide what response should be given to the following question: Whether the Archpriest and three Vicars should exercise the same care and jurisdiction, even concerning marriages; or rather, whether this should exclusively belong to the Archpriest in such cases.

RESOLUTION. The Sacred Congregation, after deliberation held on July 26, 1879, decided to respond as follows: Negatively to the first part, and affirmatively to the second: that is, the Vicars have the right and the obligation to exercise a subsidiary care for souls (1).

FROM WHICH WE GATHER:

I. That each people should be assigned one pastor, who should know his flock well and be known by them, and from whom alone the sacraments may licitly be administered.

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II. That the Church, which is said to be the spouse of Christ, (1) Consult, dear reader, what we have noted in similar questions, and which has already been presented in Volume IX, pages 11-6, 281, 604, and Appendix 3, page 614. Also see Volume IX, Senogallien, Rights of the Parish and Prelates, November 17, 1758, mentioned in note page 294, and Volume XL, page 75. From what has been stated, you will understand that the Sacred Congregation wishes to adhere entirely in practice to the decree of Trent, Session 24, chapter 13, of this tenor: "The Holy Synod commands the Bishops, for the safer salvation of those souls entrusted to them, that they assign to each a distinct and proper parish, and that they assign to each a permanent and particular parish priest, who may know them, and from whom alone the sacraments may licitly be received." Therefore, the same Sacred Congregation, whenever the opportunity arises, as in this case, decides that there should be one pastor from whom all the faithful of the parish receive the sacraments. When a parish is governed by several [priests] in solidum, the door is opened to many scandals and disputes, which the Fathers of Trent, having been taught by sad experience, decreed should be banished from the Church of God.

[*Latin ed. p. 19*]

I. The rights of a parish cannot be divided among several priests, but it will have only one priest who will govern it chastely and sincerely.

II. It is a natural defect for something that is held in common to be neglected or administered less diligently.

III. The parish, according to some authors, is so called because of a division of care; for the pastor of the Church has the care of the souls of the entire people, within those limits (1).

IV. Although the Sacred Congregation [de Propaganda Fide] entirely adheres to the decree of Trent, which indicates that a particular and specific pastor should be assigned to each people, it does not deny the plurality of pastors to the extent that it exists by apostolic privilege or by the law of foundation.

V. It has not been proven in any way that the plurality of pastors exists by law; so it seems that vicars parochial have exercised jurisdiction either by the tacit consent of the archpriest, or by a custom gradually established, while the circumstances suggest that, by apostolic approval, only one pastor was assigned to that church by civil authority.

(1) When the faithful increased greatly, individual churches were assigned to individual priests, and thus the origin of parishes arose. And the priest, or pastor of the Church, had the care of the souls of the entire people, within those limits. The institution and distinction of parishes is attributed by some to Fagnano in Chapter 2 of the Pastoral, concerning what is done by the Prelate, while others attribute it to Pope Dionysius in the second

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century.

[*Latin ed. p. 20*]

20. FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS REGARDING PAROCHIAL JURISDICTION. On September 5, 1879, a SUMMARY OF FACTS is presented. It is reported that the Church, which bears the title "Mount of the Dead," was built in the year 1530 in the district of R., and that originally a parish was established therein. However, as time passed, the current parish church of the same locality was designated as the mother church, and the parish was transferred to this new church; the other church, called "Mount of the Dead," remained deserted for a long time and was almost in ruins. In the year 1706, a confraternity of the dead was canonically established in the aforementioned old church; which, through the piety of the brothers, was adorned with new decorations and expanded with a new section. The altar, the choir, the pulpit, the organ, the bells, and the sacristy, as well as the sacred furnishings, were provided by the confraternity, using their own funds. As the number of the faithful increased greatly, the Ordinary, considering it necessary to divide the people into three parishes, requested that the pious confraternity consider whether one of the three parishes could be established in their church. The confraternity, honoring the will of the Bishop, granted the old part of the church to the parish priest, reserving the new part for themselves. Until the year 1878, relations between the parish priest and the confraternity proceeded peacefully, to the extent that the parish priest himself often served as the spiritual director of the confraternity for a time. After that time, disputes and disagreements arose between the confraternity members and the parish priest, who asserted that 1. the church had been entrusted to him; and therefore, he could fully exercise his rights therein and in all things existing therein. 2. The confraternity could not perform religious functions, nor could it have a spiritual director to celebrate funerals.

[*Latin ed. p. 21*]

PAROCHIAL RIGHTS 2. To administer solemn Masses, processions, expositions of the Most Holy Sacrament, and blessings to the people, without the presence of the parish priest, because the parochial rights would be violated. Disputation. The confreres claim that the ownership of the church belongs to them; and this is evidenced by documents numbered 29. In a similar manner, it is established that the left side of the church, along with all its accessories, namely the choir, the bell tower with its bells, the organ, the pulpit, and the sacred furnishings, was built at the expense of the confraternity. It is not fitting to say that the parish priest was entrusted with the church and other possessions upon his appointment, or that he acquired the rights of his pastoral office over objects lent by the members of the confraternity, using the canonical formulas; for the acquisition of possession

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of movable and immovable property must be governed by the provisions of the civil code. It must also be added that the use of the church's utensils was only temporarily granted to the parish priest; indeed, the keys to the church, the organ, the pulpit of the bell tower, and the sacristy always remained with the spiritual director, to indicate the confraternity's ownership. RIGHTS OF THE CONFRATERNITY. Furthermore, there is evidence in the contradictory judgment, because the confraternity, confident in its own rights, refused to hand over the keys, even when urged by civil authority. However, the right to perform funerals and other sacred functions, to celebrate Masses with singing, to hold processions of the Most Holy Sacrament, without the intervention of the parish priest, arises from the statutes of the confraternity, approved by the Curia, and from a custom that is more than secular, according to the act of its founding. The parish priest has always respected the confraternity's right regarding the association of bodies; nevertheless, the confraternity cannot be deprived of the right to perform the funerals of its own members and benefactors, according to the rules of its statutes. They also claim that the aforementioned privilege of performing these functions was granted by the Ordinary of the diocese at the time of the confraternity's founding; and this concession has been observed and practiced from the beginning without interruption. But fun-

[*Latin ed. p. 22*]

22 The actions of parish priests, which are permitted by the Bishops, cannot be prevented by the parish priests; for the Bishop is the parish priest of the parish priests, according to Benedict XIV, De Synodo Diocesana. Nor do all ages of parish priests ever seek to prevent these functions, as the Brothers strive to prove with documents. It also appears that, since the year 1774, parish priests have only celebrated Mass on the Feast of the Lord, while all other functions have been performed by the chaplains of the Sodality. Therefore, the Brothers believe that the parish priest ought to be subject to the decisions of the Congregation of Rites of the year 1704; for the Sodality does not depend on the parish, but has its own door, which is always open for the benefit of the faithful. In favor of the Sodality, it seems that the right of patronage has been established, since they provide the building, the land, etc. And Reiffenst. lib. 3, dec. tit. 38, de Iurepatr., n. 8 states: "The rebuilding of a church completely destroyed is also included under the term 'building,' in which case the first builder loses, and the one who rebuilds acquires the right of patronage"; Fagnan, in cit., cap., n. 58; Pirhing, cit., cap., n. 8. (1) The parish priest warned that the matter was not about the material property of the church, but about the parochial rights, which had been violated by the chaplains of the Sodality. Furthermore, he pointed out that the church could not in any way belong to the Sodality; for if that church, which was already parochial, had been increased in part by the piety of the faithful, that benefit could not be relinquished except

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with the favor of the parish. For, indeed, in it, although increased in part, the parish priests have always fulfilled their own functions and parochial rights. The speaker said, "It cannot be doubted that parish priests fulfill the office of a pastor in their own church," Trid. Sess. 24, de ref., c. 43. PAROCHIAL RIGHTS. (1) Furthermore, Fagnan demonstrates in Comm. ad sing. can., p. 1, eas. 2, that the right of patronage is acquired not by the one who begins to build the church, but by the one who completes it. "If Titius began to build a church and left the work unfinished, but Caius completed it, and this is tolerated by Titius, which of them acquires the right of patronage? I answer: Caius acquires the right of patronage, because he acquires it through the construction of the church, which cannot be said to be built until something remains to be built. Therefore, the right of patronage is acquired not by the one who begins to build the church, but by the one who completes it." And he returned to Ramatha.

[*Latin ed. p. 23*]

OF PAROCHIAL RIGHTS 23 Ricci, Practical Rules, vol. 1, part. 4, Barbosa on the Office and Power of the Parish Priest, part. 1, chapter 12, throughout. From this, he argues that no one can perform any functions in those churches without the consent of the Parish Priest. Indeed, it is certain that parochial rights must remain intact and protected, and must not be harmed in any way by a sodality established within the limits of the parish, according to the Bull of Clement VIII, dated December 6, 1604; by which it is prescribed that the erection of a sodality must be carried out by the Ordinary, who is responsible for approving its constitutions, so that they are not prejudicial to parochial rights. This concordant disposition is confirmed by the Sacred Congregation of the Council and the Regulations in Gaeta, dated December 1681: "In the erection of confraternities, or of new churches, a clause must always be added, without prejudice to parochial rights, because parochial rights must always be preserved." Therefore, in the Synod of Novare, it was decreed: "No priest, or chaplain, can assume any office with any confraternity, without the permission of the Bishop; but once legitimately elected, he must not perform any other parochial functions without the permission of the Parish Priest." It must also be noted, says the Parish Priest, the decree of the Congregation of Rites, dated December 1, 1703, which orders that legitimately established lay confraternities in parish churches must be dependent on the Parish Priest in the performance of non-parochial ecclesiastical functions; as he says, such as Masses celebrated for the living. Therefore, when the question was asked of the Sacred Roman Congregation: "Do legitimately established lay confraternities in parish churches have dependence on the Parish Priest in the performance of non-parochial ecclesiastical functions?" The answer was: "Affirmative." This disposition has greater force in this matter, because the sodality lacks the title of erection. Regarding the funeral rites, the exclusive

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right belongs to the Parish Priest, as confirmed by Cardinal De Luca, Disc. 22 de Paroch. "Since it is a principal parochial right (1), a decree of this kind, in which 33 questions are resolved regarding parochial rights, functions, and prerogatives between Parish Priests and lay confraternities, and their chaplains, is found in Volume I, page 591 of these ephemerides.

[*Latin ed. p. 24*]

24. OF PAROCHIAL RIGHTS: Concerning the burying and interring of the dead. This right, as belonging properly to the Parish Priest, so that he may exercise it in the church or oratory of his parish, where burial has been chosen, just as he does in his own church. This is deduced from the response to the 20th question of the aforementioned decree. To this response, the resolution of the Sacred Congregation of Councils, dated July 28, 1724, may also be added. For the Sacred Congregation of Councils, in response to the question, "Is it permissible for the Brothers of Christian Charity to bury in their own church the bodies of brothers and sisters who have chosen burial there, and can the chaplain of that church, in the absence of the Parish Priest, perform the offices and functions pertaining to those same bodies?" responded: "Affirmatively, with regard to the first part; with regard to the second, negatively, unless the Parish Priest, having been called, refuses, or unless another priest is not appointed in his place." Furthermore, the Parish Priest is entitled to his own fees in the funeral rites of the confreres; and since a fund for this purpose exists within the confraternity; this is confirmed by the authority of Cardinal De Luca. Finally, it must also be noted that if the church of the dead belongs to the confraternity, even in this case, the functions which belong privately to the Parish Priest must remain intact. (1) If, however, the confraternity exists without patronage in that church, then the Parish Priest may also perform non-parochial functions, according to the response to the first question of the aforementioned decree of the Sacred Council of Trent, 1703. With these and other things noted, the following matters must be clarified: (1) Moacell. formul, legal, from the acts, vol. 10, form. 18, no. 4, enumerates the private functions of the Parish Priest: "there," "But today," the private functions which pertain to the Parish Priest, and which are reduced to very few, namely: first, the carrying of the stole in funeral processions; second, the blessing of houses on the holy Sabbath; third, the collection of tithes, if it pertains to the chapter concerning tithes; fourth, the administration of the Sacrament of the Eucharist during the Paschal season, for all of either sex, who are contrite and reconciled, and also for the canons of the Cathedral Church, as decreed by the Sacred Congregation of Councils in Narni, on September 26, 1669; fifth, the keeping of the key of the tabernacle, and of the things which pertain to the sacraments, chapter 1, no. on the custody of the Eucharist; sixth, the blessing of the betrothed and of the bodies of the deceased before they are removed from the house; seventh, the pub-

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lication of marriages, excommunications, and indulgences, as decreed by the Sacred Congregation of Councils and the Royal Chamber in Fermo, on July 3, 1615, in response to question 8.

[*Latin ed. p. 25*]

PAROCHIAL RIGHTS: 25 Doubts. I. Whether and in what manner the Church of Monte Mortuorum pertains to the Confraternity in this case. II. Whether and what rights and emoluments belong to the Parish Priest in this case. III. Whether and in what manner, except for parochial functions, the dependent Confraternity is subject to the Parish Priest in this case.

RESOLUTION. The Holy Congregation of Bishops and Regulars, having considered the matter, gave the following responses on September 5, 1879: To I. Affirmative. To II. Affirmative; and it pertains to the Parish Priest only the right of leading the funeral procession from the house of the deceased to the Church, if it concerns members of the Confraternity, and to the respective emoluments; saving the full right of the same Parish Priest to perform the funeral rites with regard to those subject to him who are not members. To III. Negative.

FROM WHICH THE FOLLOWING ARE GATHERED: I. Under the name of "edification" is also included the reconstruction of the Church in order to acquire the right of patronage; hence, while the first builder loses this right, the one who rebuilds acquires it. II. Therefore, the right of patronage of the Church of Monte Mortuorum rightly pertains to the pious Sodalitas; and because that Church has, in part, been rebuilt by it, and has been enhanced with new beauty and sacred furnishings. III. Funerals, funeral rites, and Masses with singing for the members of the Confraternity must be performed in the Churches of the Confraternities by the chaplains of the same, and the presence of the Parish Priest is not required in any way. IV. Hence, in this case, only a dispensation was granted to the Parish Priest, so that with regard to deceased members, he may lead the funeral procession (which is a parochial function) from the homes of the same members to the Church of the Sodalitas, and to receive the respective emoluments. V. Parish Priests can fully perform funeral rites over the faithful subject to them, even if they choose the Churches of the Confraternities for their funerals or burial, rather than with the members of those same Churches.

[*Latin ed. p. 26*]

26. OF PAROCHIAL RIGHTS VI. Confraternities established in public chapels, separate from parish churches, are to have no dependence on the parish priest regarding functions that are not parochial (1). VII. Therefore, neither parish priests (unless by special law, privilege, or an unchangeable custom) possess, by reason of their office, the jurisdiction to perform non-parochial functions in chapels of confraternities, even if those

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chapels are located within the boundaries of their parishes (1). (1) See, as we have indicated elsewhere, Volume 1, page 591, where you will find the Decree of the City and the World, from the Sacred Congregation, concerning parochial functions and the precedence between parish priests and chaplains of lay confraternities. SENENSIS AND COLLENSIS JURISDICTION (1 J). On January 23, 1880. SUMMARY OF FACTS. By a decree of September 15, 1559, the Cardinal Tarugi, Archbishop of Siena, established a perpetual vicariate bordering the chapel of Trecciano, dedicated to Saint Michael. And among other duties, he imposed on the new vicar the obligation "to celebrate Mass on all Wednesdays in the church of Trecciano, which is annexed to the Archiepiscopal see." It should be noted that this obligation applies to the archbishops of Siena, even those currently in office, and to those who administer the affairs of this chapel; because it is declared that the church is annexed to the Archiepiscopal see. When the church of Collensis sought to be raised to the status of a diocesan seat, the aforementioned chapel was separated from the Archdiocese of Siena, along with many other churches, and included within the boundaries of the new diocese being established. Nevertheless, the aforementioned vicariate, or prebend, which had recently been established, remained within the boundaries of the Archdiocese. This decree is considered the original founding document regarding the obligation of celebrating Masses (1). (1) See Volume IX, page 407, where another question related to territorial jurisdiction is discussed.

[*Latin ed. p. 27*]

Siena and Colle di Val d'Elsa: In the jurisdiction of these places, there is no other case. The present Archbishop of Siena, when asked according to custom, considered that the right and authority to oversee the fulfillment of obligations belonged to him. He maintains that the Archbishops of Siena have used this right from the most remote times. The Bishop of Colle di Val d'Elsa expressed a contrary opinion, because such a chapel is located within the limits of his Diocese. However, by unanimous agreement, the two Bishops presented the matter to the Congregation of Bishops and Regular Canons for clarification. A Synopsis of the Arguments. THOSE ARGUMENTS FAVORING THE BISHOP OF COLLE DI VAL D'ELSA. It has been observed that, given the nature of the matter, it is beyond doubt that the jurisdiction over the Trecciani chapel belongs to the Ordinary of Colle di Val d'Elsa. Although the Archbishops of Siena have exercised this jurisdiction as if it were their own, there have not been lacking, at times, protests from some Bishops of Colle di Val d'Elsa, when they have learned that the obligations of Masses were not being fulfilled in the aforementioned chapel. Furthermore, it is not lacking that one of these Bishops sent a communication regarding the matter, and that he almost acknowledged the jurisdiction of the Archbishop of Siena over the chapel in question. For,

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even if the jurisdiction is withdrawn regarding a part of the territory, with the approval of the Apostolic See, it is necessary. Which was not the case here. Moreover, among the Canonists, it is not disputed that the Bishop fully exercises his jurisdiction over all churches, chapels, and oratories existing within the limits of the territory entrusted to him by the Holy Father; De Luca, on jurisdiction, Disputation 1, no. 18, says: "Consequently, the Archbishop's authority is based on diocesan law, and on spiritual jurisdiction over all churches and persons, both clergy and laity, within his Diocese, until such authority is proven to be limited or exempted, as is demonstrated by numerous precedents, because the Bishop is the Pastor, having general care and jurisdiction over the flock entrusted to him within the territory assigned to him; therefore, it is the duty of the lower prelate to prove the limitation, which has not been proven in this case."

[*Latin ed. p. 28*]

28. SENEN. AND COLLEN. JURISDICTION. "It is not founded on the intention of having a general rule for oneself," *Mancia Dec. 25, n. 4, etc.* "And Barbosa states it in Axiom 198: 'Rules, in cases of doubt, must be adhered to, until the contrary or an exception is proven,' *leg. ab ea parte ff. de probat. I.* That is, in the *Codex sacros. Ecclesiae, I*, in the last *Codex de haered. inst.*, etc. And therefore, he who has a rule in his favor, has a well-founded intention, and consequently transfers the burden of proof to him who relies on an exception, *cap. ad decimas* and there the gloss on the restitution of the despoiler, *lib. 6*. *Iason in lege coetera n. 4, ff. de legat, i.*, where it is stated that what must be said according to the rule, when the case excepted by the rule is not proven, *Aneran. cons. 223*. Regarding the evidence, *in fine*, where it is said that he who has a rule in his favor, can say to the one alleging a limitation, "give me the text," *Geminian. cons. 108*; *Fulgos. cons. 182*; *Mascard, de probat, conci. 1261*; *Card. Tusch, prael. conci. 6, tit. R., etc.* Having considered these things in theory, it could be conceded to the Archbishop of Siena the right to oversee the fulfillment of Masses; just as patrons are granted the right to know whether the obligations have been fulfilled, before the due payment of money is made. But this right differs greatly from the jurisdiction exercised in another territory, where the place governs the action. Therefore, tolerance, or a broader concession regarding this, cannot have a meaning other than: "that which exceeds the law should not be extended to the consequences," *ff. regni. Iuris 141*. And a strict interpretation regarding territorial jurisdiction has followed the interpretation of the Sacred Congregation in *Caputaquensis Jurisdictionis*, even though it is "very doubtful" whether the disputed places are within the jurisdiction of the Ordinary of Capaccio. And in *Balneoregen. Jurisdictionis, September 16, 1871*.

WHAT IS BENEFICIAL TO THE ARCHBISHOP OF SIENA. Nevertheless, concerning the Antistite of Siena, no one can deny that there has been,

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for three centuries and more, an observance. So that it cannot be seen as exceeding the law to extend his jurisdiction by the Archbishop over the Church located in another Diocese. It is known that by this means, the same...

[*Latin ed. p. 29*]

LUCCA and COLLE DI VAL D'ELSA. The jurisdiction of 29 could be acquired, and even an inferior Prelate could acquire jurisdiction, as De Luca, *Disputationes de Jurisdictione*, 20, no. 13, concerning jurisdiction, states: "Even in cases in which a certain rule, hindering the exercise of jurisdiction in another's territory, would seem to apply, it still receives a limitation from a contrary legitimate custom, or presumption, by which jurisdiction can be acquired in another's territory." Abbot Felino, Alexander of Nevo, and others, as well as Fagnanus in the chapter concerning prescription, agree. In this matter, at least with regard to the fulfillment of duties by a pious legate, secular law stands aside to demonstrate the Archbishop's jurisdiction. But, according to De Luca, "Centenaria is that better title of the world, by which all things are prescribed, all things are changed." And the Sacred Roman Rota, in the judgment of Martínez in Praenestina, March 24, 1818, no. 3, states: "He who uses the title of centenaria possession certainly possesses a better and more powerful title, and is supported by law; is it a pact, is it a privilege? All these things, and if you desire anything else from centenaria possession, are to be presumed." Nor do two or three protests, issued at various times by the Bishops of Colle di Val d'Elsa, invalidate the preceding custom or prescription, since, to invalidate a previous custom or prescription, another prescription, or at least a custom of a long time, is required. Fagnanus, *Liber 2 Decretorum*, chapter 15, law 1, *Nemo alieno*, § Temporalia: "A complete prescription or custom is not annulled if, once or twice, the contrary is done, but a contrary prescription or custom is required." With the foregoing noted, the following question was to be resolved: Whether and how the Archbishop of Siena has jurisdiction over the churches of Saint Michael, located in the territory of Colle di Val d'Elsa, in this case. RESOLUTION. The Sacred Congregation of the Holy Office and the Rota, after discussion on January 23, decided to respond: "Affirmatively, with regard only to the right to oversee the fulfillment of the obligations of the Masses, about which in this case."

[*Latin ed. p. 30*]

SECTION 30. CONCERNING THE JURISDICTION OF COLLEGES:

I. Every Ordinary (since he is the pastor of his flock) fully enjoys, by right, spiritual jurisdiction over all churches erected, and over all persons residing within the boundaries of the Diocese granted to him by the Holy Father.

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II. Therefore, the jurisdiction of any Prelate, founded on the law and a general rule favorable to him, remains complete, unless he proves a limitation or exemption with clear arguments.

III. In case of doubt as to whether an exemption exists, the general rule must always be adhered to, until the exception is proven by the one alleging the exemption.

IV. However, the general rule prohibiting the exercise of jurisdiction in another's territory can be legitimately limited by a contrary legitimate custom, so that it may happen that a Prelate can exercise jurisdiction in another Diocese.

V. He who possesses a centennial right has a superior title in the world; by means of which, all things are changed and prescribed, even another's jurisdiction.

VI. In the matter of overseeing the fulfillment of obligations concerning the Oratory located in the Diocese of Colle di Val d'Elsa, the favor of the Archbishop of Siena, beyond the centennial right, has been present, as is evident from ancient documents brought forth.

[*Latin ed. p. 31*]

31. FROM THE DECREE OF THE HOLY CONGREGATION OF THE INDEX, dated Feria II, die 2, June 1880. The Sacred Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord our Pope Leo XIII and the Holy Apostolic See, concerning the examination of books of pernicious doctrine, and their condemnation, proscription, expurgation, or permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on the day of June 1, 1880, condemned and condemns, proscribes and proscribes, or orders to be referred to the Index of Prohibited Books, the following works:

Alexandre Dumas Fils. - *La question du divorce*. Paris, Calmann Levy éditeur, 1880.

Maria al cuore dell' italiano. - Manifestazioni di un eremita dell' Appennino, per servire di seguito alle Glorie di Maria, scritte da Alfonso Liguori. Florence, Tip. di GL Barbera, 1880.

The aforementioned work, condemned according to Reg. II Ind. Trid. The author of the work entitled: Callet Aug. *L' Enfer*. Paris, 1861, was prohibited by decree of June 6, 1862, and commendably submitted and disapproved of the work.

[*Latin ed. p. 32*]

The provided page translation does not contain any Scripture quotations. Therefore, no changes are required.

32. DECREE Concerning the Works of the Author, Charles John B. A., entitled: "The Spiritual Body" – In Latin: "Corpus spirituale." and "The

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Forty Days" – In Latin: "Quadraginta dies." Published in London, 1876, and condemned by decree on April 8, 1878. He commendably submitted his works and had them condemned. Therefore, no one, of whatever rank or condition, should dare to publish, print, or distribute, in any place or language, or to read or retain, the aforementioned works; but rather, he shall be obliged to deliver them to the Ordinaries of the places or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to Me, the undersigned S. I. C. from the Secret Archives, were approved by HIS HOLINESS, POPE LEO XIII, and He commanded that this Decree be promulgated. In witness whereof, etc. Given in Rome, on the 22nd day of June, in the year 1880. M. CARD. MARTINELLI, Prefect. Fr. Hieronymus Pius Saccheri, of the Order of Preachers, Secretary of the Congregation of the Secret Archives. At the place of the Seal, on the 25th day of June, 1880. The aforementioned Decree, which I, the undersigned, Cursor, testify to have been affixed and published in the City. Vincentius Benagfia, Apostolic Cursor.

[*Latin ed. p. 33*]

33 APPENDIX I. MANY DECREES RELATING TO MATTERS TO BE ADDED ARE REFERENCED IN APPENDIX IV OF THE COLLECTION OF SACRED RITES COMPILED BY GARDELLIN. The present Bishop of Biesen obtained an indult from the Congregation of Sacred Rites granting him the faculty of delegating his Vicars General, Rectors of Churches, etc., to confer the blessing upon that sacred vestment in which the sacred unction is not applied. Since no formula is found for the blessing of priestly or clerical garments, other than that which is found in the Pontifical, and therefore it seems reserved to the Bishops; delegated priests must resort to the blessing for priestly garments added in general to the Missal. However, this blessing does not appear entirely suitable in all circumstances, for example, for the blessing of a cincture. Therefore, the aforementioned Reverend Orator humbly requested the Sacred Congregation to allow the priests delegated by him to use the formula given in the Pontifical for the blessing of any garment, which is moreover a less solemn formula. The Sacred Congregation, having heard the report of this request made by the undersigned Secretary, replied in writing: "Let the delegated priests use the blessing that is read in the Roman Ritual." And the Acts, Volume XIII, page 145, so decreed and ordered to be observed on March 16, 1876.

SAINT GERMAIN. The present Master of Ceremonies of the Cathedral of Saint Germain in Rimouski humbly requested the Sacred Congregation of Sacred Rites to resolve the following doubts:

DOUBT I. Whether the clergy should incline their heads at the words "Holy, Holy, Holy, Lord God of Hosts" in the hymn "Te Deum," and also in the blessing of the Palms, according to the custom that prevails in some places, as prescribed for the Mass?

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DOUBT II. Whether they should also incline their heads at the doxology "Father, of infinite majesty" which occurs in the same hymn "Te Deum"?

DOUBT III. Whether the clergy should make the sign of the cross at the words "Blessed is He who comes in the name of the Lord" in the aforementioned blessing of the Palms, as they do in the Mass?

The same Sacred Congregation, having heard the report of the undersigned Secretary, and having considered the written opinion of another of the Masters of Ceremonies, replied in writing: "The rubrics of the Roman Missal and Breviary must be observed." And so it decreed on March 16, 1876.

[*Latin ed. p. 34*]

34 APPENDIX PATAVINA

My Lord, as Your Eminence has explained, the Sacred Congregation of Rites, by Indult of July 29, 1875, in the Cathedral Church, with the consent of the Chapter, appointed eight Honorary Canons, with the privileges and honors enjoyed by Apostolic Protonotaries, according to the Apostolic Constitution *Officium Apostolicae Sedis* of August 29, 1872. However, since these Honorary Canons may be required by the titular canons to chant the Mass in their place, and since the Honorary Canons cannot do this in such cases, and since, according to the aforementioned Constitution and Canon, these canons consider themselves to be adorned with these privileges, Your Eminence humbly requested of the Most Holy Lord, for the sake of the decorum of the sacred functions, that these Honorary Canons, in the Cathedral, might use the *Palmatoria* and the Canon, and in the chanting of Vespers, might use the *Palmatoria*. The Sacred Congregation of Rites, having heard the report of this request made by the undersigned Secretary, decided to write to Your Eminence: The Honorary Canons are to be considered equal to the titular canons with regard to the use of insignia when performing sacred functions in the Cathedral choir; however, all are to be reminded to observe the prescriptions in the recently published Constitution regarding the privileges of Protonotaries. Rome, March 16, 1876.

To the Most Reverend Lord, as Brother Bishop of Padua.

OLINDEN.

Reverend Father Anthony Francis, of the Diocese of Olinden, in Brazil, humbly implored a solution to the following doubts:

Doubt I: Is it permissible to remove the sacred pyx from the tabernacle and to place it, covered, under an umbrella, for the purpose of giving a blessing to the people?

Doubt II: In churches in which the Most Holy Sacrament is reserved with the permission of the Ordinary, and in which the people are blessed with

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the sacred pyx on feast days, is it permissible that, on at least the principal feasts, the people be blessed with the Most Holy Sacrament placed in a monstrance, without requiring permission from the Ordinary?

The Sacred Congregation, after considering the doubts presented by the undersigned Secretary, decided to respond as follows:

To 1: Let the instruction issued by the Most Holy Pope Benedict XIV be followed, namely: "The tabernacle of the Eucharist should only be opened, and the sacred pyx, closed and covered with its veil, should be presented to the eyes of the people..." However, it is absolutely forbidden to remove the sacred pyx... from the tabernacle, and to place it, covered, under an umbrella, since no trace of this rite is found among the writers, and no custom of the Apostolic See is found that we must absolutely follow.

To 2: Let the resolution in Ari-

[*Latin ed. p. 35*]

On the 11th of September, 1847, the following question was posed: Whether the venerable custom of dismissing the faithful with the Benediction of the Most Holy Sacrament, enclosed in the sacred pyx, and on feasts with the ostensorium, ought to be maintained? And the response was: According to the judgment; and the judgment is that, whenever the Most Reverend Ordinary finds nothing inconvenient, he may permit the continuation of said custom. And thus it was decreed on the 16th of March, 1876 (1). ORIOLEN. The Most Reverend Bishop of Oriolen humbly requested from the Sacred Congregation of Rites the following privileges for the Congregation in the city of Alonensi, under the name "de la Guardia y Oración a SSmo Sacramento" (of the Guard and Prayer before the Most Holy Sacrament): 1. That the members of the congregation may be permitted to incense after the magistrates and other dignitaries during the time of the solemn Mass and Vespers. 2. That the members of the congregation may be permitted to carry lit candles from side to side of the baldachin during processions with the Most Holy Sacrament. 3. That a server, wearing the red vestment called a "gramaglia," and carrying a staff, commonly called a "mazza," may accompany the members of the congregation during the recitation of prayers, by turns, before the Most Holy Sacrament, in order to indicate the stations and genuflections. The Sacred Congregation of Rites, having heard the petition in writing from another of the Masters of the Sacred Ceremonies, responded as follows: To I. Negatively. To II. It may be permitted that six or eight of the members of the congregation, carrying lit candles, walk on the sides of the baldachin, under which the Most Holy Sacrament is carried; the rest should follow the Most Holy Sacrament itself. To III. Affirmatively. And thus it was decreed and granted on the 28th of March, 1876. BONEAREN. The Reverend Father Anthony Espinosa, Secretary of the Archdiocesan Curia of Buenos Ayres in South America, humbly requested from the Sacred

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Congregation of Rites a solution to the following doubt: Now that the Most Holy Pope Pius IX has pleased to declare Saint Joseph the universal Patron of the Church, ought his image to be displayed, or ought it not to be displayed, when his feast occurs during the week of the Passion? The same Sacred Congregation, having heard the petition in writing from another of the Masters of the Sacred Ceremonies, decided to respond as follows: Negatively, according to the Decree of January 16, 1649. To III. And thus it was decreed, and it was ordered to be observed on the 3rd of April, 1876. OF THE MISSIONARIES OF THE IMMACULATE CONCEPTION OF THE BLESSED VIRGIN MARY. The Reverend Father Joseph Fabre, Superior General of the Missionaries of the Immaculate Conception of the Blessed Virgin Mary, humbly requested from the Sacred Congregation of Rites... (1) The decree that follows is found in Coll. Grardel, vol. VIII, page 425.

[*Latin ed. p. 36*]

36 APPENDIX: Solutions to Doubts are sought, namely: DOUBT I. In parochial churches, which are served by Oblate missionaries through one of their own, can said missionaries follow a publicly approved calendar of liturgical celebrations? DOUBT II. To the extent that the answer is affirmative, can they impose their publicly approved calendar upon priests who wish to celebrate in said churches? DOUBT III. To the extent that the answer is affirmative (speaking generally), can they do so in a specific case, in which they have been appointed by the Ordinary to certain celebrated sanctuaries, to which a frequent gathering of the faithful and priests occurs, and which are places almost common to the clergy in every diocese, whether they are parochial churches or not? DOUBT IV. Is a religious community attached to a public church bound to observe the office of the titular patron of this church, and throughout the entire Octave? DOUBT V. Is it also bound to observe the office of the diocesan patron, and throughout the entire Octave? The Sacred Congregation of Rites, having heard the written opinion of one of the Masters of the Apostolic Ceremonies, decided that the doubts should be answered as follows: To I: Negatively. To II and III: As provided in the first. To IV: Affirmatively. To V: Affirmatively for the first part; negatively for the second. And thus it was written and ordered to be observed on April 7, 1876. I. CAPUANA: The current calendar of the Metropolitan Church of Capua, with the permission of his Most Reverend Archbishop, proposed the following doubts to the Sacred Congregation of Rites, namely: DOUBT I. By virtue of the decree of the S. R. C. given for the Kingdom of both Sicilies on November 11, 1850, it was established that on the eve of the Feast of the Immaculate Conception of the Blessed Virgin Mary, the commemoration of Vigiliae [Bisceglie] could be added both to the Office and to the Mass, with the addition of the IX Lesson of Vigilia in the Matins of the current Office, taken from one of the days within the

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Octave of which the Office cannot be recited that year, and with the Prayer of Vigilia of the Assumption of the same. Since, however, according to the Letters in the form of a Brief of September 25, 1863, His Holiness Pope Pius IX granted a new Office for the same Immaculate Conception, and in those same Letters mention is made only of the Mass of Vigilia in those places where it has been granted, the following is asked: 1. Can the recitation of the IX Lesson of Vigilia of the Conception, and its commemoration to be continued at Lauds, be performed according to the aforementioned decree of the year 1850, or must it be omitted? And to the extent that the answer is affirmative to the first part, it is asked: 2. For the commemoration of Vigilia to be recited at Lauds, should the Prayer of Vigilia of the Assumption or the Mass granted in the year 1868 be recited? DOUBT II. In the Metropolitan Church of...

[*Latin ed. p. 37*]

37. Regarding the decree of the Sacred Congregation of July 27, 1839, in Pisa, at VIII o'clock, and so it was written, and it was ordered to be observed on April 10, 1876. In the church of Capua, there are two Ceremonial Mansionaries, who, according to custom, alternate in performing the Ceremonial Office, wearing a choral habit, namely a winter cloak of dark fur, and a summer silk cloak of violet color, just like the other Mansionaries who wear the same cloaks. But since in the Ceremonial of Bishops, Chapter V, paragraph 4, it is clearly stated that their habit should be a violet-colored undergarment, and over it a clean cotta, the following questions arise: 1. Is it permissible for the aforementioned Ceremonial Mansionaries to perform their Ceremonial duties wearing the aforementioned cloak, or rather, should they wear the habit according to the Ceremonial? And, to the extent that the answer to the second part is affirmative, the following is asked: 2. Do these same Ceremonial Mansionaries, when ministering without the choral habit, receive the daily distributions of their benefices according to the decree of the Sacred Congregation of July 27, 1839, in Pisa?

The Sacred Congregation of Rites, having maturely considered and examined the proposed doubts, has approved the following response:

Regarding 1 and 2: Observe the rubric as on the Vigil of St. Thomas the Apostle, that is, in the Office, nothing is said about the Vigil; however, the Mass should be celebrated that was approved for the same Vigil on September 25, 1863.

Regarding II: Regarding the first question, observe the disposition of the Ceremonial of Bishops according to the decrees. Regarding the second question, the answer is affirmative, according to the decree.

Most Reverend D. Anthony Carminati, while still serving as the Capitular Vicar of the Diocese of Sebenico, requested, in order to avoid differences of opinion among the members of the Sacred Chapter, a humble solution to the following doubts from the Sacred Congregation of Rites:

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DOUBTS:

I. When celebrating a funeral Mass, should one show reverence to the choir when approaching the altar, and again when returning to the sacristy?

II. When the celebrant kneels at the words "Incarnatus est" and "Verbum caro factum est" in the last Gospel, should the clergy who are not seated also kneel?

III. When the Creed is recited in a solemn Mass, at the words "Et incarnatus est," should the clergy kneel, and should the inner clergy, including the canons who are seated in the highest stall, or those who are seated only, uncover their heads and bow deeply?

The same Sacred Congregation, upon hearing the vote of another of the Masters of Ceremonies of the Apostolic See, and upon the report of the undersigned Secretary, responded to the proposed doubts as follows:

Regarding I and II: Affirmative.

Regarding III: Observe the prescription in the Ceremonial of Bishops, Book II, Chapter 8.

And so it was written, and it was ordered to be observed on May 27, 1876.

[*Latin ed. p. 38*]

APPENDIX 38. ROERMOND. Since certain doubts have arisen concerning the observance of feasts and other matters pertaining to the sacred liturgy in the Diocese of Roermond, the present document, prepared by the Diocesan Council with the permission of the Most Reverend Bishop, humbly requests that the Sacred Congregation of Rites deign to resolve these matters. The doubts are as follows:

DOUBT I. If the Feast of the Annunciation of the Blessed Virgin Mary falls on a Thursday during the Octave of the Lord's Supper, are the Ordinary pastors of the places concerned to take measures so that certain private Masses may be celebrated before the solemn Mass, so that the faithful may more easily fulfill the precept of attending Mass? It is asked whether this practice should still be observed in places where the aforementioned feast has been abrogated, if, according to the mind of the Holy See, public office should be performed on abrogated or transferred feasts, as was done before the reduction of feasts?

DOUBT II. By the gracious concession of the Sacred Congregation of Rites, the Feast of the Division of the Most Holy Apostles is celebrated annually in the Diocese of Roermond on July 4th. It is asked: 1. Should a commemoration of this day also be made on the day within the Octave of the Most Holy Apostles Peter and Paul? 2. What color should be used on the aforementioned feast; either red, as being proper to the Apostles, or white, as is the practice in many secondary feasts of the Apostles?

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DOUBT III. Since the name of Saint Joseph is to be expressed by order in the Collect, it is asked whether, in votive Masses celebrated in honor of Saint Joseph, at the time when this prayer is to be said in the third place, the Collect should be replaced by the Prayer "Concede," which is placed first among the various Prayers, as has been declared previously?

DOUBT IV. By Decree No. 5079 of February 27, 1847, the Sacred Congregation of Rites decreed that Professors, as well as Seminarians in the higher Orders, are to be bound by the Octave of the Titular Church of the Seminary of Roermond, or, as the Sacred Congregation itself states, of the Church annexed to it. However, from the response of the same Sacred Congregation of July 21, 1855, No. 5215, a doubt has arisen as to whether the Orator of Roermond has used the term "Seminary Church" correctly. Therefore, permission is requested to explain the case more fully. The Church of the Roermond Seminary is an ancient church of the Carthusian Monastery, which was suppressed at the end of the last century, and whose other buildings are also occupied by students. Today, while this sacred building remains generally closed during the week to outsiders, it is open to the faithful on solemn days and holidays. Therefore, if this building deserves to be called a church by its nature and also by the external size of the building, it seems that, for the present purpose and use, it should rather be called a public chapel, since it seems to be intended more for the free use of the faithful than for a particular family or college.

[*Latin ed. p. 39*]

39. The following irregularities exist in the diocese: The parish church of Hontem, dedicated to Saint Gerlacus the Confessor; the parish church of Susteren, dedicated to Saint Amelberga the Virgin; and the parish churches of Berg-Terblyt, dedicated to Saints Monulphus and Gondulphus, Confessors and Pontiffs, are designated as the principal patrons. These aforementioned saints are indeed found in the diocesan calendar, along with their offices and Masses, approved by the Holy Roman Church on September 5, 1867, and granted to the clergy of Roermond; but they are not found in the Roman Martyrology. Furthermore, it is known that the churches listed first and second were, before the Gallican upheaval, churches of religious orders, and were dedicated to patrons different from those of today. It is to be presumed that these changes in patronage were made properly and canonically at the beginning of this century, although there are reasons for doubt. Therefore, it is humbly requested that the Holy Roman Church deign to examine and, if necessary, to correct and confirm these choices of patrons, so that no disturbance may arise among the people from this change of patrons. [x commoditati.] Hence, the question arises whether the response given on February 27, 1847, should be observed, or not?

DOUBT V. Since the bodies of the faithful must be buried only in a church or in a cemetery that has already been properly blessed, and there-

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fore it would almost be superfluous to prescribe the blessing of a new tomb, if this can be omitted, when the matter concerns a blessed cemetery, and the Roman Ritual also seems to prescribe that a tomb, if it is not blessed, must always be blessed by a priest before it is used for the first time, without any distinction being made whether the tomb is dug in a church or in a cemetery, which is always to be presumed to be properly blessed. However, since various authors interpret the words of the Ritual in different ways, the following is asked: 1. Must a tomb that is newly dug in a properly blessed cemetery nevertheless be blessed for the first time? 2. If the answer to the first question is negative, does this prescription therefore only apply to a crypt or a stone tomb built in a cemetery or church, and not to a simple hole dug in a church? 3. If the formula of blessing must be recited, must nevertheless the sprinkling and incense be observed, as is prescribed for the burial of infants?

DOUBT VI. According to the Decree of Urban VIII, March 23, 1630, only those can be chosen as patrons who are venerated throughout the Church under the title of Saints; but in this case...

Furthermore, the same Congregation, with the reference of the Secretary, after hearing the written opinion of another of the Masters of the Apostolic Ceremonies, considered it advisable to answer the proposed doubts as follows: To I. Negatively, unless a special Indult exists. To II. To the first question, affirmatively; to the second question, negatively to the first part, affirmatively to the second.

[*Latin ed. p. 40*]

APPENDIX I. 40 Ad III. The prayer must be recited by all, omitting the name of St. Joseph. Ad IV. Affirmative. Ad V. To the first question, negatively; to the second, affirmatively; regarding the third, the rubrics must be observed. Ad VI. For the sake of prudence, at least, the matter was discussed with the Most Reverend Father on May 27, 1876. Furthermore, concerning the aforementioned doubt, the Secretary reported faithfully to the Most Holy Pope Pius IX, and His Holiness benignly approved, so that the defect in the legitimate election of the patrons, mentioned in the prayers, may be remedied. On June 1, 1876. DINIENS. The Reverend Bishop of Digneâ□□Riezâ□□Sisteron proposed the following questions to the Sacred Congregation of Rites, and earnestly requested their resolution, namely: For approximately three hundred years, the Church of St. Jerome, the Confessor and Doctor, has been both the Cathedral Church and the parish church of the city of Digneâ□□Riezâ□□Sisteron, although the ancient Cathedral Church dedicated to the Blessed Virgin Mary, assumed into heaven, still exists, located many miles from the city and now abandoned. Given these circumstances, the following is asked: 1. Does St. Jerome, as the titular of the current Cathedral Church, enjoy all the rights that belong to the titulars of Cathedrals, and must his feast day be celebrated with the solemnity

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of the first class, with its Octave, not only by the clergy attached to the aforementioned church, but also by all priests residing in the city, especially by the directors of both seminaries, and by the chaplains of the hospice and of the nuns, etc.? 2. What suffrage should be offered by the directors of the major and minor seminaries, by the chaplains of the hospice and of the nuns, by the clerics in sacred orders, and by the priests in the major seminary during the time of ecclesiastical recess? Is it sufficient to offer the suffrage of the Blessed Virgin, titular of the ancient Cathedral, through her common antiphon, "Holy Mary, help the poor"? Or should the suffrage of St. Jerome, titular of the current Cathedral, be offered? Or perhaps it is better to offer the suffrage of the patrons of the city, Ss. Domninus and Vincent, through the antiphon commonly used with them in the prayer? The Sacred Congregation of Rites, after hearing the opinion of another from the Masters of the Ceremonies of the Apostolic See, regarding the aforementioned questions, decided to respond as follows: Ad I. Affirmative in all respects. Ad II. Regarding the first part, only the suffrage of the patron of the diocese or place is required, in addition to the common suffrage; regarding the second part, it is sufficient, even if the commemoration is not to be included in the case of the Blessed Virgin, who is the titular; regarding the third part, negatively; regarding the fourth, as provided in the first, that is, affirmatively, and in the manner customary in the diocese.

[*Latin ed. p. 41*]

4i »ix i. And thus it was recorded and ordered to be observed on May 27, 1876. RAVENNATEN. Priest, Vicar of the Metropolitan Church and of the Royal Archbishopric of Ravenna. The Ceremonial Master humbly requested the Sacred Congregation of Rites to declare on the following matters, namely: QUESTIONS. In a certain church of this city, daily after the second Mass, the priest, having put on a humeral veil, takes the Most Holy Sacrament from the tabernacle, and immediately blesses the people with it and replaces it, without saying or singing anything before or after. Is this practice permissible? QUESTION II. Sisters and students of a certain institution, when passing before the Most Holy Sacrament hidden in the tabernacle, do not wish to kneel, but only bow, saying that it is improper for women to kneel on one knee. Should this practice be discontinued? QUESTION III. And if so, should the same be said regarding the kneeling that is due to the proper Bishop? DURIUM IV. Are women who are assisting in sacred functions, or even those who are praying privately, obliged to cover their heads with a veil when they look through a window (commonly called a "Coietto") that looks into the church, with the passage between them? QUESTION V. Is the rubric in the Missal concerning the sprinkling of blessed water on Sundays, regarding the repetition of the antiphon "Asperges me" or "Vidi aquam," mandatory or merely directive? QUESTION VI. And if it is mandatory, is it necessary for the singers in

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the choir to repeat it as well, or is it sufficient for the priest to repeat it humbly along with the ministers? QUESTION VII. Can clerics who are in minor orders, or even those who are only tonsured, serve at the Blessing of the Holy Oils on the fifth feria in the Lord's Supper, for the purpose of completing the number of Deacons and Subdeacons, without wearing a maniple and stole? The Sacred Congregation, having heard the report of the undersigned Secretary, and the report of another of the Masters of Apostolic Ceremonies, decided that the following answers should be given to the proposed questions: To I. The practice, as described, is not permissible. To II. Negative. To III. Affirmative. To IV. Affirmative. To V and VI. The antiphon is to be repeated by the celebrant and by the singers. To VII. Let a decree be issued on this matter. In Ravenna, on February 26, 1874. And thus it was recorded, and ordered to be observed on July 7, 1876. ROSSANEN. Reverend Father Aloysius Rapani, Canon and Vicar of the Metropolitan Church of Rossanen. The Master of Ceremonies humbly presented the following to the Sacred Congregation of Rites, namely, that in the aforementioned church, for the greater benefit of the faithful, every day during the Octave of Corpus Christi, the Most Holy Eucharist...

[*Latin ed. p. 42*]

42. The Blessed Sacrament is usually exposed for public veneration either in the morning before the recitation of Matins, or in the afternoon before the singing of Vespers. After the recitation of the Hour of None in the morning, and after Vespers in the afternoon, the Blessed Sacrament is carried processionally within the church, and finally, after the Imposition of the Blessing, it is placed back in the tabernacle. However, on the Sabbath within the Octave, after the procession is completed after Compline, the Blessing is given, and for the Matins and Lauds recitation, which must be anticipated, because on the following Sunday a solemn procession will take place by the Confraternity of the Most Holy Sacrament and the entire Chapter, the Sacrament of the Eucharist is again exposed, and after the recitation is completed, it is placed back in the tabernacle without any further Blessing. Having explained these matters, the aforementioned Orator humbly requested the same Sacred Congregation to resolve the following doubts: I. Whether, on the Sabbath within the Octave of Corpus Christi, after a procession has been held after Compline and the Blessing has been given, the Blessed Sacrament can again be exposed, so that the faithful may obtain the Indulgences granted to those who assist at the recitation of Matins and Lauds? And, if the answer is affirmative, II. Whether another Blessing must be given to the people after the recitation of Matins and Lauds, as was given after the completion of Compline? The Sacred Congregation, after hearing the aforementioned Secretary, and after considering the opinion of another of the Masters of the Apostolic Ceremonies, decided that the proposed doubts should be answered as follows: To I. In the negative. To II.

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According to what is provided in the first question. And thus it was decreed and ordered to be observed on July 8, 1876.

AT TURIN. The Canons under the title of the Most Holy Trinity humbly presented the following to the Sacred Congregation: In Turin, in addition to the Chapter of the Metropolitan Church, there exists a College of twelve Canons, who have their own chapel there, in which they sometimes say Mass and recite the Office for the Dead, but they are not subject to any obligation concerning a choir. This College is divided into two Congregations, one serving the parish church called "Most Holy Body of Christ," and the other serving the church dedicated to St. Lawrence. These same Canons, according to ancient custom and the force of their constitutions, usually celebrate the Octave of their titular feast in these two churches. However, a doubt has arisen as to whether they are obliged to celebrate the same Octave, and whether they can do so in these two churches, since the College does not reside in them, but in the Metropolitan Church, and since the Sunday of the Octave of the Most Holy Trinity falls within the Octave of the Most Holy Body of Christ in the Archdiocese of Turin, by a special privilege, so that only feasts of the first and second class can be celebrated within that Octave.

[*Latin ed. p. 43*]

43 He presented the matter to the Sacred Congregation of Rites in Venice, explaining that, besides the parish church, he also had another subsidiary church dedicated to Saints Benedict the Abbot and Scholastica the Virgin, in which another priest, holding the title of Vicar, continuously resides, subject to all forms of parochial dependence, in order to administer the Sacraments of the Eucharist and Penance, and to perform other functions. This church, having formerly been a parish, therefore, the aforementioned Orator humbly requests that, notwithstanding the Decree of the same Sacred Congregation in Venice, dated September 25, 1852, concerning Questions II, the aforementioned Vicar be permitted to celebrate the Offices of Dedication of the church, and the titular feasts under the double rite of the first class, with the Octave, and with the added privilege that priests celebrating Mass in the aforementioned feasts there may do so in accordance with the aforementioned Offices.

>ix i. After these explanations, the aforementioned Canons, having obtained the permission of the Most Reverend Archbishop of Turin, humbly requested the Sacred Congregation to resolve the following questions:

QUESTION I. Are they obligated to celebrate the Octave of the titular feast with the Office and Mass?

QUESTION II. At least, is it permissible for them to do so?

QUESTION III. Whether, in the Nocturns within the Octave, the Scriptural readings appropriate to the day, or those proper to the feast of the

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Most Holy Trinity, should be recited?

QUESTION IV. Whether, in the Nocturns of the second and third days, the proper readings should be recited, as they exist in the Octave approved by the Sacred Congregation, or whether the readings of the feast should be repeated?

QUESTION V. Finally, if there is no obligation or permission to celebrate the Octave with the Office and Mass, should at least some commemoration be made?

The Sacred Congregation of Rites, with the undersigned Secretary present, and after hearing the opinion of another of the Masters of the Sacred Ceremonies, decided that the proposed questions should be answered as follows:

Regarding Question I: The Decrees of Wilna, April 22, 1741, and of Pamplona, September 11, 1847, are to be consulted. Regarding the remaining questions, provision has been made in the first answer. And thus it was written and ordered to be observed on July 11, 1876.

VENICE. The Reverend Father Peter Frattini, Parish Priest of Saint Luke the Evangelist, in the City, wrote to the Sacred Congregation. And the same Sacred Congregation, after hearing the opinion of another of the Masters of the Sacred Ceremonies, decided that the following should be answered:

For the sake of the Masses alone, excluding the Octave for feasts that occur during Lent, and with the Rubrics observed. And thus it was written and granted on July 15, 1876.

SANTANDER. The Most Reverend Vincent Calvo y Valero, Bishop of Santander, requested that the Sacred Congregation declare whether it is permissible to use a carriage to transport the deceased to the cemetery, and therefore, whether it is permissible for the Parish Priest and the clergy.

[*Latin ed. p. 44*]

APPENDIX 44. Concerning the ecclesiastical rite: Should the Faithful be associated with the burial? The Sacred Congregation of Rites, after consideration by the undersigned Secretary, decided to respond as follows: The Church's rite requires that the bodies of the Faithful, whether they are transported to the Church or to the cemetery, should always be accompanied by a Priest. And so it responded on July 15, 1876.

A QUESTION was posed to the Sacred Congregation of Rites: In churches where the Feast of the Dedication of Saint Michael the Archangel is celebrated with an octave, on October 2nd, which is also the feast of the Holy Angels Custodians, should a commemoration of the octave of Saint Michael the Archangel be added to the Office and the Mass? The Sacred Congregation itself, after consideration by the undersigned Secretary, and after hearing the opinion of another, decided to respond in writing: Affirmative. And so it responded, and ordered it to be observed on July 15,

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1876.

CONGREGATION OF THE HOLY ORDER OF SAINT BENEDICT, Monte Cassino. The Reverend Father Francis Petronio, titular canon of the Chapter of Justinopolitan, as editor of the Calendar of the united dioceses of Trieste and Justinopolitan, humbly proposed the following questions to the Sacred Congregation of Rites, for their consideration:

QUESTIONS:

I. The monks of the Congregation of Saint Benedict, residing in the monastery of Saint Cyprian in Trieste, and subject to the Bishop, celebrate the Feast of Saint Benedict with an octave, according to the Decree of the Sacred Congregation of Rites of January 17, 1781, approved by Pope Pius VI. This octave is so privileged that on each day of the octave, only the first and second classes of the Office are recited. The question is: Does this octave, with such a privilege, also include the Office of the Minor Sunday that falls within it (such an occurrence takes place whenever the Feast of Saint Benedict is transferred to the third day after Sunday in Albis, as if it were its proper day), so that only a commemoration of Sunday should be made with the last lesson and Homily at Matins?

II. When the first and second classes of the Office occur within the aforementioned octave, should the commemoration of the same octave be omitted?

III. On January 15th, the aforementioned monks celebrate the Feast of Saint Maur, Abbot, with a double of the second class, and sometimes, due to the occurrence of the Second Sunday after Epiphany, the Feast of the Holy Name of Jesus also occurs, also of the second class. Since 1736, on January 23rd, it was decided by the Sacred Congregation of Rites in Einsiedeln, no. 16, that in the aforementioned occurrence, the Feast of Saint Maur should be transferred to the first available day; the question is now: Should the Feast of the Holy Name of Jesus also be transferred, due to later Decrees (which, however, do not address this case)?

[*Latin ed. p. 45*]

IX IV. According to the Decree, he who holds the Office of a Saint cannot celebrate the Mass of that Saint in a foreign church to which the same Mass has not been granted, and in other Decrees, the Mass of a Saint is granted to certain churches and persons; therefore, those from outside who have not been granted this permission cannot celebrate it. The question arises: Can one who holds the Office of a Saint, and for whatever reason, whether due to travel, pilgrimage, or any other cause, celebrate the Mass of another Saint in a foreign church, either according to his own Office, or according to the Office of the Church, if the color is appropriate to the Office of the celebrant, and if the color is dissimilar according to the Church Calendar, when otherwise he would be obliged to abstain from celebrating?

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DUBIUM DUBIUM V. It is asked whether the practice of adding the "Symbolum" to Masses on the feasts of Saints of the Order, for example, St. Maurus, St. Scholastica, St. Placidus, and St. Gertrude, can be maintained, due to the rite of the second class, by which the aforementioned nuns celebrate that feast? The Sacred Congregation of Rites, after hearing the report of the undersigned Secretary, and also the opinion in writing of another of its Consultors, decided that the proposed questions should be answered as follows: To I and II, negatively. To III, postponed and placed on the file. To IV, a resolution will be given on the first day of June 1701, at 3 o'clock. To V, affirmatively. And so it was written on July 17, 1876.

IACEN. The Reverend Monsignor Gerard Genuardi, Bishop of [location unspecified], humbly requested the Sacred Congregation of Rites to provide a solution to the following questions, which he found were tolerated in the diocese entrusted to him:

DUBIUM I. Can the parish priests of the diocese of [location unspecified], separated from the Archdiocese of Messina, always use the violet mantle in ecclesiastical functions, and the four ministers in the solemn Mass, wearing their rain garments, and adorned with a ring with gems?

DUBIUM II. Can it be tolerated in the same diocese that, in general, any priest celebrating solemnly, uses a presbyter wearing a rain garment?

DUBIUM III. Can the custom be tolerated that the clergy and the people sit while the Most Holy Sacrament remains exposed?

The Sacred Congregation, after mature and careful consideration, decided that the proposed questions should be answered as follows:

To I, negatively in all respects.

To II, negatively, and this abuse should be eliminated.

To III, affirmatively, provided that there is no scandal or irreverence.

And so it was written, and it was ordered to be observed on July 28, 1876.

CASERTANA Among the parish priests of the Forania of Terra Lamnaei, commonly called Terra di Lagno, within the limits of the Diocese of Caserta, and the Archpriest and Parish Vicar of the same territory, who was recently added to the list of...

[*Latin ed. p. 46*]

46 APPENDIX I. Concerning the honorary chaplains of His Holiness outside the city, the following question arose in Belluno and Feltre: The parish priests, adhering to the decree of the Sacred Roman Congregation, Most Reverend Lord Salvator Johannes Barelato, Bishop of Belluno, formerly of Lucio Ferraris, with the name of Baptista Bolognesi, No. 65, Volume III, presented to the Sacred Congregation for Sacred Rites, stating that it was not possible for them to wear the prelate's habit outside their own parish church, especially during the processions of Saint Mark, the Rogations, and the Most Holy Body of Christ, to which they are legitimately called.

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The parish priest argued that the chaplain, honoring His Holiness, should not wear the prelate's habit, or at least should not violate the rule by wearing the violet cassock and the tibialia of the same color with the mozzetta and the camauro. However, since it is very important that this question be resolved as soon as possible, Most Reverend Lord Henry de Rossi, the current Bishop, requested that the Sacred Congregation declare, jointly, whether or not the aforementioned decree should be followed.

The Sacred Congregation, having heard the report of the undersigned Secretary, and having considered the opinion in writing of one of the Masters of the Sacred Ceremonies, declared: Nothing prevents the parish priest, who is also an honorary chaplain of His Holiness, from wearing the violet cassock, together with a silk sash of the same color, in all ecclesiastical functions, both within and outside his own parish church, except for the tibialia, which must always be black. And thus it was decreed on August 1, 1876.

Since the interpretation and application of this decree have not always been consistent, a humble request was made that the same Sacred Congregation would deign to declare the following doubts:

DOUBT I. Whether, in the Cathedral church, in addition to the anniversary of its own dedication, which falls on the second Sunday after Easter, the anniversary of the dedication of other churches should be celebrated on the first Sunday of September? And, to the contrary:

DOUBT II. Whether the aforementioned anniversary of all the churches of the Belluno diocese (except for the Cathedral) should be celebrated in all the cities and dioceses of...

[*Latin ed. p. 47*]

APPENDIX concerning churches, or rather, solely churches that have been consecrated? And to the extent that it affirms the second part: QUESTION III. What is to be done in several churches within a diocese, over which a priest presides as Rector and administers certain sacraments, or a Canon, or another priest who holds a choral benefice in the Cathedral? And the Sacred Congregation, having heard the opinion in writing from one of the Masters of the Apostolic Ceremonies, decided that the following should be answered: To I. Negatively. To II. Affirmative to the first part, negative to the second. To III. The aforementioned priests must conform themselves in their office to the Calendar of the Cathedral to which they are attached, except for the feasts of the titular saint, the aforementioned anniversaries of the dedication of all the churches of the Diocese of Belluno, and except in cases in which priests celebrating in a "foreign church" are required to conform to the Calendar of that same church, according to the rubrics and as has been decreed on several occasions. And thus it was decreed on August 28, 1876 (1). In the Diocese of Vicenza, the feast of the Annunciation of the Blessed Virgin Mary has always been celebrated

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with the complete Octave, whether it is celebrated in Lent, or whether it is transferred after Easter, concerning only the choir. However, despite the general decree of March 22, 1817, a recent controversy has arisen among the clergy as to whether, in the future, the same practice should be maintained, adhering to the custom hitherto observed and confirmed by the example of the Patriarchal Church of Venice, or whether obedience should be given to the provisions of the aforementioned general decree, as has been done in the neighboring Dioceses of Verona and Padua? The controversy having been brought before the Sacred Congregation of Rites, and after the Sacred Congregation, having heard the report made by the undersigned Secretary, as well as the opinion of another of the Masters of the Apostolic Ceremonies, decided that the custom currently in force in the Diocese of Vicenza could be maintained. And thus it wrote on January 4, 1877. To the Most Reverend Lord Joseph M. Alberti, Bishop of Syrene, in the canonical report which he submitted to the Sacred Congregation for the Propagation of the Faith concerning the state of his diocese in 1874, he stated among other things the following: Marriages are contracted properly, but sometimes the future spouses insist that the sacred rite be performed late in the church, or even at home. When the woman is a widow, the marriage takes place late in the church, because the Mass for the bride and groom is excluded; but if she is not a widow, it rarely happens late, although with the injunction that the spouses should be present in the morning to receive the blessings during the solemn Mass, which sometimes happens to be unfulfilled; more rarely, it takes place at home. But for the faithful residing in the lower city of Hermopolis*, (1) See Volume X, page 293.

[*Latin ed. p. 48*]

48 APPENDIX I. Si semper cogitur Episcopus dispensationem in reprobatione adimplere, haec, audito voto in scriptis alterius ex Apostolicarum Caeremoniarum Magistris, ut matrimonium celebretur, ad vitandum concursum schismaticorum in Ecclesia, quod non potest esse sine aliqua profanatio loci, vel etiam admiratione et risu eorumdem per vias in transitu Sponsi et Sponsae et sequentium, propositis postulatis scribendum censuit:

Ad I. et III. Ad Supremam Universalem Inquisitionem.

Ad II. Negative iuxta Decreta.

Atque ita rescripsit die 4 Ianuarii 1877.

VALLISPRATEN.

Romani D. Eugenius O'Connell, Episcopus Vallispraten, a Sacra Congregatione de Propaganda Fide intus postulavit, humiliter, solutionem sequentis dubii, nimirum: Utrum liceat Episcopis in Dominicis Festis diebus Missae sollemni assistere solummodo cum Mozzetta et Rocheto vestitis. Quum vero S. Congregatio de Propaganda Fide preces ipsas ad Sacrorum Rituum Congregationem pro opportuna solutione transmiserit, haec ad

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relationem subscripsi Secretarii, audita sententia alterius ex Apostolicarum Caeremoniarum Magistris, proposito:

Ad I. et III. Ad Supremam Universalem Inquisitionem.

Ad II. Negative iuxta alias Decreta.

Die 22 Ianuarii 1877.

[*Latin ed. p. 49*]

49. The Divine Providence of Our Most Holy Lord Leo XIII, Pope, delivered this address on the 20th of August, 1880, to the Cardinals of the Holy Roman Church, in the Vatican.

Venerable Brothers, the sacred majesty of the Supreme Pontificate, which we hold more dear than life itself, demands that we, with all our strength, preserve and defend it. Therefore, we must, before you, Venerable Brothers, today, report to you the grave injury inflicted upon the supreme authority of Ourself and upon this Apostolic See, an injury that has been perpetrated not long ago. We understand that this injury has been inflicted by the administrators of the public affairs of Belgium, who, without just cause, have abruptly dismissed Our legate. We are not so much moved by private grief as we are concerned about the honor of the Apostolic See. We have ordered that the entire course of events, along with the documents and authorities upon which one may rightly rely, be made public, so that all may be brought to light by the truth and that just men may easily determine how little foundation and strength these conjectures have, which our enemies have unjustly leveled against the Apostolic See.

Now, considering more deeply the reasons for this event, and recognizing in it, as in other matters of a similar kind, which are carried out almost everywhere, certain signs that indicate... *[The Latin text is incomplete here.]*

[*Latin ed. p. 50*]

50. The war, it is clear, has been waged with great vehemence against the Church of Christ, a nefarious undertaking begun long ago. Indeed, we observe even more openly and blatantly the ancient conspiracy of partisan men, aimed at alienating people from the Apostolic See, with the intention of exercising all power and authority in their own will and judgment over the Christian peoples, whom the Roman Pontiffs have once subdued under their authority and strong protection. And the same plan was clearly that of the enemies, when they sought to wrest the civil principate from the Roman Pontiffs by force and deceit, manifestly established by the divine Providence and with the consent of the ages, so that they might always have that security and freedom, without which nothing is more necessary in governing the Christian republic. Nor do the machinations devised with the utmost artifice and carried out with equal cunning differ, through which many have long sought to make the Church invisible and suspect among

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the people, to stir up hatred against Catholic institutions, and especially against the Roman Pontificate, which is divinely instituted for the salvation of the common good of humankind. These same plans, the enemies of the Catholic name had intended to carry out in Belgium, in order to break or loosen the bonds that unite the Belgian people to the Apostolic See. Therefore, given the opportunity, their voice has been heard several times in the very public assemblies of legislators, demanding that the Belgian Legation at the Roman Pontiff be abolished; and that they have resolved and determined to do so. Indeed, just two years ago, scarcely had men of those factions gained access to the reins of government, when there was no delay in openly declaring that the recall of the Belgian envoy from the legation had been decreed; and that it would be carried out as soon as the opportunity arose. With these plans and this state of mind, the introduction of the law concerning the public teaching of the principles of education presented itself as an opportunity to further their cause.

You know, Venerable Brothers, the nature and purpose of this law. It is evident that the intention in its drafting was to draw minds away from the authority of the Catholic religion, or from their early education.

[*Latin ed. p. 51*]

ALLOCUTION 51 and the institution of youth are, by means of this law, reserved to the authority and will of civil power, entirely removing any provision of the Church. Indeed, this law decrees that in the education of children, there should be no part for the sacred pastors, nor any vigilance of the Church; and that, entirely separated from religion, letters and the education of children, if one considers the very reason and discipline of public schools, all instruction concerning religion is forbidden: which is easily seen to be dangerous to the faith and morals of those in the beginning of their years. — And the danger is understood to be even greater, because by the same law, all religious instruction is plainly excluded from those very arenas of letters, which they call "normal schools," where those who wish to devote themselves to the education of children are trained by instruction and precepts. Such a law, by which so much is taken away from the doctrine and the rights of the Church, and by which the eternal salvation of the young is exposed to the greatest danger, could not, without dereliction of duty, be approved by Bishops, to whom it is divinely imposed as a duty and a burden, to diligently strive in the defense of the salvation of souls and the sanctity of faith. Truly, if they had rightly perceived what time and duty demanded of them, they would have diligently striven to keep youth away from such public schools, and would have established others, subject to their authority, in which the tender minds of the young would be excellently formed with both the elements of letters and of religion. And in this matter, great praise is due to the Belgians, who have readily and zealously lent their aid to this undertaking. For when they

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perceived how much danger the law posed to religion, they undertook, in every way possible, to defend their unwavering faith; and they did so with such ardent zeal that the magnitude of their labors and expenses has inspired admiration in all to whom the fame of this matter has reached. We, however, who, on account of the exalted office of the Supreme Pastor and Teacher, must everywhere preserve the unblemished faith, defend the sacred rights of the Church, and repel the distinctions of salvation from the head of the Christian nations, are forbidden by the very nature of our office to allow the law, which Venerable

[*Latin ed. p. 52*]

Our Belgian brother-bishops had rightly condemned it. Therefore, in Our letters to Our most beloved son, King Leopold II of the Belgians, We openly declared that the law enacted on July 11th greatly contradicted the precepts of Catholic doctrine; and that it would be harmful to the salvation of the young, and would also bring calamity to the state itself. Therefore, having disapproved and condemned it not once, as We do now before you all, for the same reasons, We again disapprove and condemn it. We act in this manner according to the institutions of the Apostolic See, which has always weighed its judgment and authority heavily upon schools of any religion, those which are considered moderate or neutral, and which, by their very nature, ultimately end up denying God; and it has never permitted such schools to be patronized by Catholics, except in certain cases, when time and necessity compel them to do so, provided that the danger of a bad influence is not present.

Nevertheless, animated by Christian charity, and wishing to avoid giving any reason for a more bitter conflict, We strongly urged Our Venerable Brothers, the Bishops, who were engaged in the dispute, to not abandon moderation and gentleness in the present matter, and to act with leniency in imposing penalties; because the pursuit of Christian interests, so inflamed by a just cause, ought to be tempered by that paternal benevolence which embraces all who are astray. Our exhortations had achieved much of what We desired, and it seemed that they would achieve even more in the future; but, according to the opinion of those in charge of Belgian affairs, the Bishops themselves, although firmly dedicated to their duty, were nevertheless being blamed by Us, and they wished to be reprimanded for something in which they were blameless. Since We freely and steadfastly denied this, it was deemed proper to act officiously and amicably with Us, and, in a remarkable and scarcely ever heard example of unseemliness, Our representative was ordered to leave the country.

Furthermore, having been provoked by ambiguities and calumnies, they

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attempted to conceal the injustice of the matter under false names, and to...

[*Latin ed. p. 53*]

ALLOCUTION 53, and to transfer the blame to the Apostolic See. But as their audacity grows, neither rebukes nor insults restrain them: indeed, even in the city of Rome, there was no lack of hostile spirits displaying insolent behavior. Therefore, mindful of our apostolic office, and deploring this grave and sudden event before all of you, Venerable Brothers, we testify and lament that an injustice has been committed against us and against the Holy See of Peter. And since the Supreme Pontiff has the right and power to send Nuncios or Legates to foreign nations, especially those bearing the Catholic name, and their princes, we reproach those who have violated this right, and we do so all the more because this right is much more limited in the Roman Pontiff, since it derives from the supreme authority of primacy, which He divinely holds over the entire Church; as the glorious Pope Pius VI declared with these words: "It is the right of the Roman Pontiff to appoint some, especially in distant places, who, in His absence, may represent His person, who may exercise the jurisdiction and authority conferred upon them by a stable delegation, and who, finally, may perform His duties; and this is derived from the very essence and nature of primacy, from the rights, privileges, and endowments connected with primacy, and from the constant discipline of the Church from the earliest centuries." (1) We also lament that our Legates were dismissed from Belgium due to a harmful and contrived cause; whereas, on the contrary, it is clear that they were dismissed because we refused to abandon our office, and after having made known our will, in agreement with the Venerable Belgian Bishops, we did not wish to separate ourselves from them for any reason. Finally, we cannot contain our complaints because of the many and varied things that have been said about us and this Apostolic See, which are insulting and atrocious. However, we, who are always ready to patiently endure injuries, and to forgive our detractors and enemies, rejoice, following the example of the Apostles, that we are considered worthy (1) *Resp. super Nuntiaturis Apost. cap. 8, sect. 2 n. 24.

[*Latin ed. p. 54*]

64. ADDRESS: We, in the name of Jesus, endure insults (1). Nevertheless, we testify before God and men that we will never allow anything to diminish the esteem and dignity of the Apostolic See; and we are certain that, with all our strength and with all the resources of life itself, if circumstances demanded it, we would defend it, so that the amplitude of this dignity may be preserved, and so that it may be handed down intact and inviolate to our successors. We desire that these sentiments, which just grief and a sense of duty have expressed to us in this most august assembly, Venerable Brothers, be widely disseminated throughout the world, so that princes

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and all peoples, having understood the fairness of our complaints, may understand the origins and the outcome of the matter we are discussing; and that they may beware of deceits by which dishonest men influence the minds and hearts of the multitude; and that they may strive zealously to remain steadfast in their faith in the Roman Pontiff, without any change or weakening of their will. As for the Catholic people of Belgia, it is fitting to place them in the highest degree of praise, because, with great affection and concern, upon the departure of our legate, whom they had honored for so many years in every way, they offered testimonies of their devotion to this Apostolic See; for they wish, in every way possible, to compensate for the injuries suffered by our humble person, the Vicar of Jesus Christ. And it is pleasing to us to recall a certain great tribute of praise which was paid to them by Gregory XVI, the Most Holy Pope, in our presence. For when he graciously appointed us to a legation among them, he spoke of that people in general in the most exalted terms, calling them a people of great fortitude and piety, whose faith and love for the Apostolic See and for their princes had been established in many things and for a long time. Truly, these very virtues are attested by the monuments of past ages, and we ourselves have come to know them through experience and custom, as long as that legation lasted (1).

(1) Acts V. 41.

[*Latin ed. p. 55*]

We have received the petitions [addressed] to Us; and the most pleasing memory of those men, of those times, and of those events, firmly adheres in our mind, fostering and nourishing our particular benevolence towards them. Therefore, we trust that the Belgians will remain, so that they may never depart from the love and obedience of the Church, and that they may remain steadfast in the profession of the Catholic faith, and that, concerned and solicitous for the Christian upbringing of youth, they may always prove worthy of their fathers and ancestors. These are the things concerning Belgium, which we have communicated to you, Venerable Brothers, so that we may repel the injury brought against the Apostolic See, and defend the violated dignity.

However, as you yourselves see, the present labors of the Church are not confined to the borders of Belgium. The war extends further, and the damages to the Catholic cause are wider; of which, however, we omit the discussion for the present time.

Meanwhile, it is necessary to maintain elevated hopes and confirmed spirits, and to earnestly strive through united prayers to the Father of mercies and God of all consolation, that He may benignly console the Church, His bride, so weary from evils and so exercised by so many cares; and that He may restore the long-desired tranquility, calming the waves and the

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currents.

[*Latin ed. p. 56*]

56. Apostolic Letters in the form of a Brief, concerning the heavenly canonization of Saint Thomas Aquinas, Patron of Studies. LEO XIII, Pope. For the Perpetual Remembrance of the Matter. Since it is both natural and confirmed by the Catholic Church that men seek the patronage of those distinguished by holiness, and that they seek examples of excellence and perfection in some field to imitate; therefore, many religious orders, lyceums, and literary groups, with the approval of the Apostolic See, have long desired Saint Thomas Aquinas, who has always shone like the sun with doctrine and virtue, to be their master and patron. In our times, with the widespread study of His teachings, many have requested that he be appointed as the patron of all lyceums, academies, and schools of Catholic nations, by the authority of this Apostolic See. Indeed, many bishops have signified this desire, in letters both individual and collective; likewise, members of many academies and colleges have earnestly and humbly requested it.

— Since all these fervent prayers, if deferred, would increase with the passage of time, a suitable opportunity for the matter arose with Our Encyclical Letters on Christian philosophy, for the restoration in Catholic schools of the thought of Saint Thomas Aquinas, the Angelic Doctor, which We published last year on this very day. For the bishops, academies, professors of lyceums, and from every region of the world, those devoted to the liberal arts, having heard and understood Us, testified almost with one voice and with united minds: nay, they declared that they desire to follow closely the footsteps of Saint Thomas in the teaching of philosophical and theological disciplines; for they affirm that, as We have discovered, there is a certain outstanding excellence inherent in Thomistic doctrines, and a singular power and virtue to heal the evils that afflict our age. We, therefore, who...

[*Latin ed. p. 57*]

For a long time, we have greatly desired that the schools of all disciplines flourish, especially those entrusted to such an excellent master in faith and devotion. Since these are common and well-established desires, we believe that the time has come to decide that the immortal glory of Thomas Aquinas may increase with this new addition of praise. This is the principal and ultimate reason that moves us: to elevate Saint Thomas above all others, so that Catholics may consider him as a model in various fields of study. And indeed, all the outstanding qualities of mind and genius, by which he rightfully calls others to imitation, are present in him: the most abundant doctrine, pure, suitably arranged, obedience to faith, and a wonderful harmony with the truths divinely revealed; integrity of life, along with the splendor of the greatest virtues. His doctrine is so great

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that it encompasses all wisdom flowing from the ancients, like the sea. Whatever has been truly said or prudently discussed by the philosophers of the Gentiles, by the Fathers and Doctors of the Church, and by the most eminent men who flourished before him, he not only thoroughly understood, but also increased, perfected, and arranged with such clear perspicacity, such accurate reasoning, and such eloquence, that he seems to have left posterity with the ability to imitate, and even to surpass him. And it is a very great thing that his doctrine, being instructed and prepared with the widest principles, is not suitable only for one time, but for the needs of all times, and is most fitting for overcoming errors that are perpetually reborn. Indeed, confirming itself by its own force and reason, it stands invincible, and strongly terrifies its adversaries. Nor should the perfect harmony of reason and faith be considered of lesser importance, especially in the judgment of Christians. For the holy Doctor clearly demonstrates that what is true according to the nature of things cannot disagree with what is believed, with God as the author; therefore, to follow and cherish the Christian faith is not a humble and ignoble servitude of reason, but a noble obedience by which the mind itself is aided and educated for higher things; finally, that understanding and faith come from God, not for the sake of exercising them in conflict with each other, but so that they may be united.

[*Latin ed. p. 58*]

58. Letters of the same city, bound together by mutual duties, provide mutual support. – The remarkable and wondrous harmony of all the writings of the blessed Thomas is clearly expressed in this. For in them, he excels and stands out not only in intelligence, which, preceded by faith, pursues what it desires in the investigation of nature; not only in faith, which, illuminated and defended by reason, nevertheless maintains its own integrity and power; but also, when the matter requires it, both are joined together, as if by a pact, to fight against the enemies of both. And if this firm concord between reason and faith has always been beneficial, it is even more important after the sixteenth century; for it was during that time that the seeds of excessive liberty began to be sown, which leads human reason to openly reject divine authority, and with weapons forged by philosophy, to tear down and attack religious truths. Finally, the Angelic Doctor is not only great in doctrine, but also in virtue and sanctity. For virtue is the best preparation for acquiring intellectual strength and knowledge; those who neglect it falsely believe that they are pursuing solid and fruitful wisdom, because wisdom will not enter into a malicious soul, nor will it dwell in a body subjected to sin (1). This true disposition of the soul, which arises from the nature of virtue, was not only excellent and outstanding in Thomas Aquinas, but truly worthy, and is marked by a visible sign of divine favor. For, having overcome the greatest temptation of pleasure, that most

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chaste young man received, as a reward for his fortitude, from God the gift of feeling his loins tightly constricted, and the flames of lust extinguished. After this, he lived, and was so separated from all bodily contagion that he could be compared to angelic spirits, not only in intelligence but also in innocence. For these reasons, we judge the Angelic Doctor to be truly worthy, and we gladly invite him to be a protector of studies. And when we do so, this consideration moves us, that the patronage of so great and holy a man will be of great value in (1) Wisdom 1:4.

[*Latin ed. p. 59*]

LETTERS 59: To restore philosophical and theological disciplines, with the greatest benefit to the Republic. For, when Catholic schools dedicate themselves to the discipline and the teachings of the Angelic Doctor, the wisdom of the true name will easily flourish, founded on firm principles, explained with reason and order. From the integrity of doctrines, the integrity of life arises, both private and public; and the habit of living rightly leads to the salvation of peoples, to order, and to the peaceful tranquility of affairs.

Those who labor in the sacred sciences, so fiercely challenged at this time, should draw from the writings of Saint Thomas, so that they may amply demonstrate the foundations of the Christian faith, persuade to supernatural truths, and repel the wicked attacks of the enemies of the most holy religion. And from this, all of human discipline will not have its course hindered or delayed, but will be encouraged and increased; and reason, reconciled with faith, with the causes of discord removed, will follow the leader in the investigation of truth. Finally, all who are eager to learn, having conformed themselves to the examples and precepts of such a master, will become accustomed to comparing themselves with integrity of morals; and they will pursue not that knowledge which, separated from charity, inflates the mind and turns it away from the path, but that knowledge which, just as it derives its beginnings from the Lord, the Father of light and of sciences, so it leads directly to Him.

It has pleased Us, concerning this matter, to invoke the judgment of the Sacred Council through its legitimate rites; and having considered it, with no one dissenting, and finding that it perfectly corresponds to Our wishes, We declare Saint Thomas, the Angelic Doctor, the Patron of Universities, Academies, Lyceums, and Catholic schools, with the highest authority of Ours, and We will that he be held, honored, and observed as such by all, so that it may be understood that the sacred patrons whom the Academies or Lyceums may have already chosen as their special patrons will retain their honor and their rank even in the future.

Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the 4th day of August, in the year 1837, in the third year of Our Pontificate.

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THEODULPHUS CARDINAL HERTEL.

[*Latin ed. p. 60*]

60 FROM THE HOLY CONGREGATION FOR THE CANCELLATION OF DISPUTES AND THE PROPER ADMINISTRATION OF SACRED MATTERS, on the days of April 26th and December 20th, 1879. A SUMMARY OF THE CASE. In the city of M, within the diocese of N, there were two parishes: one dedicated to Saint George, and the other to Saint Peter. Both had been adorned with the title of Collegiate Chapter since the beginning of the seventeenth century, each with three canons, through whom the parochial care was more conveniently and usefully administered by means of chaplains, whom they call "sacramentals." The church dedicated to Saint George, being the older (for it is recorded since the twelfth century among the churches immediately subject to the Apostolic See), held the title of "Metropolis" and exercised jurisdiction over the entire city of M, which was confirmed to it in the year 1636 by the Holy Congregation of Rites through solemn judgments of May 24th and September 6th, 1636. Furthermore, Pope Innocent XI ratified this with Apostolic Letters – "Alias emanarmi" – issued on June 4th, 1689, despite the opposition of the Chapter of Saint Peter, which had challenged these privileges and the very title of "Metropolis." However, since the canons of Saint Peter had not ceased from disturbances, and popular factions and seditions were stirred up over time, in the year 1757, the secular authority, instead of indicating and protecting the observance of the Apostolic Letters, intervened in the affairs of the Church, and, through a decree issued for this purpose, also granted the Collegiate Chapter of Saint Peter the title of "Metropolis," making it absolutely independent from the church of Saint George, and establishing a separate territory for each, with boundaries clearly defined.

[*Latin ed. p. 61*]

DISMEMBRATION. 61 Through this division of the city, the Canons of Saint George were obligated to abstain from performing functions outside their own district. However, both Chapters retained the right, on designated days, to assign themselves to their respective dependent churches to perform functions, as had been customary since the founding of both Collegiate churches. Thus, the secular authority, in a certain sense, restored a balance between the rival Collegiate churches, and sought to eliminate any opportunity for future disturbances. However, the administrators (who were also called stewards or procurators) of the temporal goods of the Church of Saint John, which was one of the dependent churches of the Collegiate Church of Saint George, and which had been established as a suffragan church by Episcopal letters in the year 1599, vigorously challenged the right of the Canons of Saint George to perform functions. Although such stew-

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ards existed in all the churches of the city to manage temporal goods, and both Collegiate Chapters had the right to choose them even from among the laity, and to appoint them to each dependent church; nevertheless, those who managed the goods of the Church of Saint John, being clerics, began to wage war against the Chapter of Saint George. Therefore, at first, they denied the Chapter the absolute right of election, and then, in the year 1660, through a convention held with it, they obtained the right to elect successors for themselves, to be approved by the Prefect of the Chapter, for a period of three years. Finally, they absolutely opposed the Chapter, or any part of it, from exercising the right to perform functions in the Church of Saint John, through an agreement reached with the chaplains in that church, appointed by the Prefect of the Chapter. And although they were constantly condemned by the Bishops and the secular authority, they did not cease from their actions; in the year 1824, they constructed canonical stalls in that church at their own expense, and, acting in a capitular manner, they sought to drive the Chapter away from the church, sometimes by closing the sacristy so that vestments and other sacred furnishings would not be readily available, sometimes by removing the bells, and sometimes by damaging the organ, especially on solemn days, thus striving to exclude the Chapter from the church which they claimed as their own. But they were thwarted by...

[*Latin ed. p. 62*]

62. DISMEMBERMENT. The energetic Bishop N., who in the year 1874, during a diocesan visitation, issued the following decree: 1. It pertains to the Prefect of the Chapter of St. George the right to administer the sacraments, either personally or through chaplains appointed for this purpose and approved by the Bishop. 2. To the same Prefect, by virtue of the dignity of the first chapter, it pertains to perform functions in solemnities which are not by law parochial; and in the absence of the first dignity, the right passes to the second. In these solemnities in which one member of the chapter performs functions, the right of intervention pertains to the entire chapter. 3. Chaplains are to be dependent on the Prefect for the administration of the sacraments. 4. It pertains to the economists, or procurators, to administer the goods, and they must present to the Prefect, for his approval, an accounting of these matters each year. However, since this decree created a path for tergiversation, the administrators, in the year 1875, sought to remove the Church of St. John from the jurisdiction of the mother church, unless the matter was presented to the Sacred Congregation of the Council, praying for the dismemberment of that parish; but, upon receiving information to the contrary from the Bishop, the Sacred Congregation replied on May 8, 1875, that it did not deem it expedient. Meanwhile, the Bishop was recalled from the See of N. to the Metropolitan See of S., and he held a completely opposite opinion from the one who was appointed as his

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successor to govern the Diocese of N. This latter, being certain that lasting peace in the city of M. could only be obtained through a substantial change of circumstances, forbade the chapter from celebrating functions for the purpose of accessing this filial church, except that the chapter retained the right to present its petition to assert its rights; and he sought to promote the dismemberment of that church. Therefore, after repeated requests from the economists of St. John to obtain the dismemberment, and with the Bishop recommending these requests in his report and vote, the cause was ordered to be placed on the agenda by the Sacred Congregation. On the other hand, the Chapter of St. George, contrary to the Bishop, who had forbidden the exercise of the right to perform functions, asserted that same right.

[*Latin ed. p. 63*]

DISMEMBRATION. 03 It was requested that what pertained to them be determined. And this cause, too, is joined to the other concerning dismemberment by decree. Thus, two matters were presented to the Congregation for consideration: one concerning dismemberment, in which the administrators of the Church of St. John were involved, and the other concerning the right to perform the sacred functions, which was promoted by the Chapter of St. George.

REASONS PRESENTED BY THE ADMINISTRATORS FOR DISMEMBERMENT: Five principal causes for dismemberment were enumerated.

1. Distance and difficulty in accessing the parochial church.

2. Excessive population.

3. Insufficiency and negligence of the chaplains.

4. Antipathy existing between the people of St. John and the faithful of St. George.

5. The increase in the Church's revenues in order to establish a parochial church.

The first cause for dismemberment is openly indicated by the Council of Trent, Session 21, Chapter 4, concerning reform, where it is decreed that new parishes should be established even without the consent of the rectors in those places where, due to the distance or difficulty, the parishioners cannot easily access the sacraments and the divine services.

The Congregation, adhering to this decree of the Council, has repeatedly decreed dismemberments of parishes, especially in the most recent cases of Laquedonien, December 16, 1876, and May 19, 1877, and in the case of the Dismemberment of the Parish of January 25, 1879. This theme is evident in the very Episcopal Letters by which the Church of St. John was erected as a suffragan church in the Matricis in the year 1599, which cited the distance of the Church of St. John from the Matricis and the difficulty of access as motives for its erection.

Given these circumstances, it is impossible for the chaplains to

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adequately provide for the needs of the people, as noted by Ursaya, Disput. Eccles., vol. 1, part. 1, discourse 14, n. 95 and following.

Whenever the amplitude of the parish and, respectively, the distance of the place, the increase of the population, and the roughness of the roads produce such inconveniences that the sheep cannot easily see the face of the shepherd, nor can the shepherd frequently visit the sheep.

[*Latin ed. p. 64*]

64. DISMEMBERMENT. It must be possible to recognize and personally and daily visit [the area], and such provision must be made, as in our case, so that the dignity of the ancient Church parish is not diminished, and the new filial church is suitably endowed; then, indeed, it should be a matter of dismemberment, and not of appointing chaplains. Regarding the size of the population, it must be noted, with Maupied, *Commentaria in Iuris Canonici*, vol. 1, page 1244, that in those parishes in which the number of parishioners has increased so extraordinarily, reaching twenty thousand, thirty thousand, and more, there is certainly a necessary cause for dismemberment and the erection of new parishes: especially because, with such a large number of inhabitants, there is not only difficulty, but impossibility, of administering the sacraments. For this reason also, the Sacred Congregation has frequently decreed dismemberments, and even in the aforementioned recent document on dismemberment. It is well known that the Supreme Pontiff Pius VI, in his Apostolic Letters of March 10, 1791, was greatly concerned that a single pastor in Gallia had been entrusted with the care of six thousand souls, although the law itself did not exclude vicars; and that another Supreme Pontiff, Leo XII, in his Constitution *Super universam*, was moved solely by the size of the population to decree a new division of parishes in the city of Roma. In this case, the Bishop states that the city consists of forty thousand citizens, of whom twenty-four thousand belong to the parish of St. George. Moreover, according to the Bishop's information and proposal, dismemberment is necessary from this point of view, to restore balance between the two collegiate churches: since the parish of St. Peter has only sixteen thousand souls, it would surpass the parish of St. George, which, on the contrary, would be brought into balance if nine thousand citizens were transferred to the newly erected parish of St. John. A third argument in favor of dismemberment was presented by the administrator's advocate, citing resolutions of the Sacred Congregation, from which it is clear that the ancient theory of the canonists, which held that dismemberment of parishes should not be permitted if the needs of the souls can be met by chaplains, has been abandoned. Indeed,

[*Latin ed. p. 65*]

DISMEMBRATION. 65. It is the case that chaplains, being less practical and of lesser standing, are unable to perform all those duties which

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a proper parish priest provides. The reason for this opinion lies with the Congregation of the Holy Council, which adheres more closely to the disposition of the Council of Trent, session 24, chapter 13, concerning reform. For a proper parish priest is better able to recognize and protect his flock than a chaplain, who may be likened to a mercenary of the Gospel, not recognizing the flock as his own. In truth, those who hold the office of chaplain in the city of M. are scarcely such as can be approved to receive the confessions of the faithful, and, given the opportunity, have truly shown themselves to be mercenaries. The fourth reason for the requested dismemberment was presented by the advocate, namely, the long-standing disputes which have always existed between the clergy of St. John and St. George, but which have flared up more intensely in our time, disputes in which the people are witnesses and participants, to the scandal of the goods and the rejoicing of the enemies of the Church of God. Therefore, not only the priests of the church of St. John, but also the laity, have requested the dismemberment. Fagnan demonstrates that a just cause for dismemberment exists in the case concerning the church building, number 19. The fifth reason for the requested dismemberment is the abundance of revenues with which the church of St. John is endowed. Indeed, in chapter 3 concerning church buildings, Alexander III commands that where a church is abundant in revenues, a church should be built there, and a priest established there, removing the obstacle of the appellation. In the case of the abundance of revenues of the church of St. John, there is no room for doubt. For the annual revenue of the church is stated to be 5,637 livres 21 sous, to which must be added other revenues from a certain pious work, C., amounting to 1,827 livres 41 sous, so that in total, the sum is 7,764 livres 62 sous. But even after deducting the revenues of the pious work, and considering the ordinary expenses of the church, which amount to 2,014 livres 45 sous, there still remains a sum of 3,722 livres 76 sous, which is sufficient for a proper parish. Finally, the advocate argued that it is not only necessary, but urgent, to provide for the church's erection into a parish, lest the goods of the same church be lost, according to the regional statutes, Volume XIII, page XLVI.

[*Latin ed. p. 66*]

66. DISMEMBERMENT. What they call the "patronage" was to be added, at the request of the Jesuits, to which the highest tribunal of the Italian Signatura was subject. This urgency was also demonstrated by the fact that the efforts of the heretics were increasing daily, and that a temple had been opened for their use.

ARGUMENTS OF THE JESUIT ADMINISTRATORS AGAINST THE SACRED FUNCTIONS. Their advocate argued: that the Chapter of St. George could only claim this right based on the habitual care of souls. However, habitual care was entirely absent in this case, because in the Bull of the

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erection of the Church of St. George into a collegiate church, Pope Urban VIII had stated that the "Prefect should support all parochial duties, and be assisted by chaplains and ministers," as the Rector who had previously been in charge of the Church of St. George had always done, "so that he may maintain them." Furthermore, there was no parish priest in the Church of St. George, established as a vicar of the Chapter; and since this occurred, habitual care was attributed to the Chapter. Moreover, it is not lawful for a church to be erected into a collegiate if it is still being cared for by a parish priest, as it was previously, but rather the care should remain with the parish priest, and not be transferred to the college or dignity, as testified by Ferraris in the Bibliotheca Vernaculorum, number 75. And even if habitual care were with the Chapter, it could never infringe upon parochial rights. Therefore, the Holy Congregation of the Council, in a decree of June 26, 1756, when asked whether the acts or functions mentioned above, as far as they relate to the Archpriest, could be performed by his substitute, even if not a canon, in his absence or impediment; responded affirmatively. Furthermore, the Chapter cannot exercise these functions, either through ordinary or privileged power. Not through ordinary power, because even parish priests do not have the right to perform functions outside their own church: as the Holy Congregation of Rites defined in the decrees of Urbis et Orbis in the year 1703. Not through privileged power, because a privilege is not presumed: according to the warning of the same Holy Congregation of Rites of May 4, 1857, which states: "Whatever privilege is granted for the purpose of increasing the significance of certain FUNCTIONS..."

[*Latin ed. p. 67*]

DISMEMBRATIONIS. 67 The splendor of the Church, conferred by the Apostolic See through canonical dignities, is, as it were, a violation of the Episcopal dignity, and must be interpreted with the strictest rigor: therefore, nothing else is to be understood as having been granted, except that which is specifically expressed, nor can any consequence be drawn from one indulgence or privilege to others which have not been individually described.

ARGUMENTS OF THE CHAPTER OF SAINT GEORGE. When this cause was first presented to the full Congregation on April 26th, the Chapter of Saint George raised a prejudicial exception regarding the lack of legitimate standing in the judgment for the administrators of the Church of Saint John. The basis of the exception was the legal axiom that he who has no interest is not to be heard (De Luca de Donat. disc. 2 n. 19). Since the petitions for dismemberment, which had given rise to the cause before the judgment, had been presented by the procurators, and upon examination of their qualifications, these did not represent either the parish or the Church, but only the administration of temporal goods, it was clear, the Chapter argued, that they had nothing in common with the Church or the

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parish, which belongs to the Proposit and the Chapter. Further strength was added to this argument by the fact that, as the Chapter contended, the current procurators who 'instituted the judgment' could not be considered to be such in fact, because, according to the law of 1560, they could not undertake the administration unless they sought the approval of their appointment from the Proposit: and they had not in any way sought this, those who had been designated as successors by their predecessors in the year 1877: and that they had only engaged in the affairs of the Church of Saint John through abuse. For these same reasons, the procurators lacked legitimate standing in the judgment with regard to the question of lawfully performing the sacred functions, since only those who minister to the Church in spiritual matters are able to have an interest. The procurators were elected only accidentally among the priests, since there was nothing to prevent them from being chosen among the laity as well. Finally, in this matter, the judgment was instituted not against the administrators, but against the Bishop, whose right the Chapter was defending. With these reasons presented, the Chapter, from the substantive questions...

[*Latin ed. p. 68*]

68. DISMEMBERMENT. He refrained from discussing the matter, requesting a delay, lest the most eminent Fathers should consider that sufficient grounds did not exist for this, and thus the procurators might be dismissed. Both matters having been thus considered by the parties, the following questions were to be resolved: I. Whether there is a place for the dismemberment of the parish in this case. II. Whether the sacred functions can legally be performed in the Church of St. John the Baptist in this case.

RESOLUTION. The Congregation of the Holy Council responded on April 26, 1879. To I. Affirmative. To II. That the sacred functions are not to be performed by the Chapter.

PROCEEDINGS. Having obtained the benefit of a new hearing, the dispute was entirely renewed regarding both questions, a discussion being instituted separately and against the dismemberment, and in favor of the legal performance of the sacred functions.

AGAINST DISMEMBERMENT, a speech was presented divided into three sections, in which, in the first, it was shown that the arguments themselves presented by the opponents lacked any strength. For, since the opponents were required to argue from fact to law in this case, and to prove the facts with documents, it was asserted that the documents could not be considered, since the party contending had prepared them for their own advantage, according to the well-known principle of law, that "no one can be both actor and witness." Indeed, from the declaration of the Bishop, from the intervention in the case of a certain Fraternity, and from the common purpose with which the procurators of St. John's joined with the opposing Chapter of St. Peter, it was shown that all these were actors

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in the case; and that their testimonies and narratives, presented for the benefit of the cause, completely refuted all the proofs presented by the opposing side, and concluded that such proofs could only have had as much validity as the witnesses themselves promised, which, since there was no faith in the person of those who presented them, it followed that the proofs themselves could not be valid, and must be considered as non-existent.

CHAPTER OF ST. GEORGE.

[*Latin ed. p. 69*]

DISPUTATION. C9. The matter extended further, concerning whether, given and not conceded, the officials of the Church of St. John could use documents pertaining to the records, and the Chapter asserted that the arguments derived from these documents would be refuted, demonstrating that either the causes of dismemberment listed in law had nothing in common with the subject matter, or that they suffered from intrinsic falsity, since in the testimonies, which largely contradicted the summary, matters were presented as true. Therefore, first responding to the argument of the officials, the Chapter demonstrated that the cause of dismemberment arising from distance and difficulty of access was entirely foreign to the case, because this is usually mentioned when the faithful are compelled to go to a parish to receive the sacraments and hear divine services. This was the intention of the sacred Council of Trent in Chapter 4, session 21, concerning reform. In the present case, there was no need to go to the Collegiate Church of St. George, since everything pertaining to the parish is found in the Church of St. John since the year 1599, when the Bishop established it as a suffragan to the Cathedral. Indeed, it is proven from the very records of the administration of that Church that the sacraments are administered to the faithful, and the Gospel is preached, and the sacred oils are kept, and many functions are celebrated. Therefore, since there is no occasion to go to the Church of St. George, it is entirely inappropriate to bring up distance and difficulty of access. The size of the congregation was not as numerically large as the Bishop and the officials asserted, but was derived from municipal and ecclesiastical records of souls. Such a congregation was not numerically opposed by the Bishop, but rather, it was intended that, through dismemberment, an equilibrium would be established between the Churches of St. Peter and St. George. However, everything indicates the contrary, that the equilibrium actually existing would be disturbed by the proposed dismemberment: for the Collegiate Church of St. Peter, which is smaller and ought to be smaller, would become larger, and would numerically surpass the other, and while this one would retain its jurisdiction over three suffragan churches, the Church of St. George would have only two. This would cause a great diminution of the importance of the Cathedral,

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which...

[*Latin ed. p. 70*]

70. DISMEMBERMENT. The very authors cited above warn that it must be avoided. For Ursaya, in *Disceptationes Eccl.*, volume 1, part 1, discourse 14, number 95 and following, states: "It is to be considered as leading to dismemberment when the dignity of the ancient Church is diminished." Therefore, the argument should be turned against the Bishop and the procurators, since it is not a matter of equality, but of a disturbance of equality arising from the dismemberment. From the demonstrated constitution of the Church of St. George, and from the names of the chaplains, many of whom were part of the group of procurators, it was evident that the ruin of souls, due to their negligence, was being caused by those very chaplains. For since the Bishop had commendated the procurators, it could not have been that he would not also commend the chaplains, who were either part of the group of procurators or still are. He demonstrated with testimonies that all of them were fit to hear confessions; and that some of them were distinguished for preaching the Word of God. The facts presented to prove their negligence were everywhere tainted with falsehood, and the administrators were so guided by the spirit of factions that they even counted the living among the dead in their search for those who had died without the sacraments. The antipathy of the people existed only in the minds of the procurators of the Church of St. John, who, marked by a priestly character, spared no artifice to bring scandals before the eyes of the faithful, and to stir up factions. For it was not the people who hid the vestments, who stole the bells, who damaged the organ, but the procurators; in order to prevent the Chapter of St. George from carrying out its duties. Furthermore, the most serious thing of all for obtaining dismemberment, and which should always precede any action, is entirely lacking in this case. For, as shown in the books of administration of the revenues of the Church of St. John, the revenues of that Church, including the contributions of the pious work C. (which do not exceed 150 annual *libellae*), amount to the sum of 5 *libellae* 6 *denarii* 12 *scrupuli*: 9 *denarii* 4 *scrupuli*; while the expenses amount to 5 *libellae* 7 *denarii* 12 *scrupuli*: 75 *denarii*; and therefore, the income exceeds the expenses by the sum of 99 *denarii* 7 *scrupuli*. Therefore, either the Masses, or the burdens, or the pensions, or the cult, or the variable expenses must be reduced, or a means must be found to increase the income.

[*Latin ed. p. 71*]

DISMEMBRATION. 71. It is necessary to send, in the annual reports, at least 850 [signatures]. The danger threatening the goods of the Church of Saint John must be relegated to dreams; for, since April 21st, before the case was even presented before the Sacred Congregation, a judgment had

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been issued, entirely in accordance with the wishes of the procurators. The temples of the heretics existed in the minds of the procurators, just as the desire of the people for a new parish existed; whereas, on the contrary, almost all the faithful of Saint John have protested that they do not wish to be separated from the parish of Saint George, lest the entire city be deprived of the immediate protection of Saint George, its principal patron. In the third section, the Chapter enumerated the evils that would arise from the dismemberment: these are the moral and material depression of the collegiate church, the erection of a third parish; and in this, the foment of new dissensions and scandals would grow daily. Indeed, it is certain that, once the collegiate churches have been suppressed by Italian law, priests will be found who will seek to be co-opted into the clergy of the collegiate church, in order to preserve the honor of their parish and the primacy of Saint George, their patron. But with the collegiate church suppressed, and the spirits of the priests depressed, they will be made to feel themselves participants in the ruin of their church. To this must be added the loss of certain revenues, which can certainly be ascertained from the books. The existence of a third parish is undoubtedly to be expected: for, without a doubt, the procurators and the pastor of Saint John will cry out that the autonomous parish of Saint John should enjoy all those privileges, just as the parish of Saint Peter enjoys them, which, through abuse and the promotion of factions, has taken the title of a secular parish from the authority of the parish, and which has provided the most powerful advice and assistance to the procurators of Saint John in order to achieve victory for them. For the defeat of the rival collegiate church will be turned into their own triumph. To overcome all this, a completely different case must be presented, and that is the case of Saint John, of January 25, 1879. "If," in this case, "the city was so greatly expanded to the north, far and wide, that the ancient city of Wiener Neustadt seemed to have been added to by new roads and the construction of new houses,"...

[*Latin ed. p. 72*]

72. CONSIDERING the division, the true frequency of the people, and the difficulty of access, for the people had indeed increased, and because of the growth of the city, some were located far from the parish church: the matter was being considered in light of the people's wishes, as well as the newly erected heretical temples among the houses, and the newly constructed, large church of the Immaculate Conception, to which a sum of money had been granted, and which the Bishop was to establish as a parish within that area. Indeed, nothing of this sort was to be considered in this case, as demonstrated; rather, the opposite was entirely true, considering the circumstances of the place and the sentiments of the faithful. Therefore, the Chapter concluded that it would be wasting its time if it were to discuss the principles of law applicable to such cases. For the law is well known

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to be applied in such matters, especially in our time, when divisions are received with great favor. But since the facts present a case so different from case to case, that what divisions are commonly considered opportune and salutary, may sometimes be inopportune and even harmful, it appears that the division requested by the procurators, considering the circumstances of the time and place, would not be beneficial, but rather would bring harm.

TO CARRY OUT SACROSANCT FUNCTIONS, the Chapter also used a threefold argument. First, it demonstrated that the law it claims is supported by the most solid foundation in the decrees of the Most Holy Congregation of Rites, published on May 24th and September 6th, 1636. For, on May 24th, the Sacred Congregation declared the church of St. George in the city of M. to be a collegiate and mother church, and that it should be given precedence and prominence over all other churches in the same city; and on September 6th, the same Sacred Congregation, for the sake of peace, enumerated what those forms of precedence were, and in number six, it explicitly stated that if the clergy of St. George were to go to the church of St. Peter to perform public functions, it would pertain to the Prefect of St. George, and in this case, precedence should be given to the clergy of St. George; and since the Supreme Pontiff Innocent XI, in his Apostolic Letters of June 4th, 1689, confirmed these same decrees, it can no longer be doubted that the Chapter of St. George has a right.

[*Latin ed. p. 73*]

DISMEMBRATION. 73 points in favor of exercising the functions. Given such a weighty and solemn judgment, the question is no longer whether the judgment was good or bad, but whether it was made: and since that is established, the matter, once judged, must be held as legally valid. And in this place, it is noted that, even without these decrees, it would not have been difficult to prove that one possesses this right, because in the Bull by which the Most Holy Pontiff Urban VIII erected the Collegiate Church of Saint George, as a parish church, he used the words "title of collation, denomination," thereby suppressing and extinguishing the nature and essence of a parish church...by authority, and establishing the church as a secular and collegiate institution, and therein establishing one Prefect, who holds the first and principal dignity, etc." And because he assigned to the Chapter "the fruits, revenues, and all rights, emoluments, and benefits, both certain and uncertain, even those derived from the care of souls, from stipends, and from the altar, as well as all and each census, revenues, and goods," and perpetually applied and appropriated them, so that the Prefect, in view of the exercise and burden of the care of souls incumbent upon him, and each of the other Dignities and Canons, should have an equal portion of all of these, it follows that, given the suppression of the parish church and the erection of a collegiate church in its place, and given that the fruits of the church have been attributed to the

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entire Chapter, the following principle of Pignatelli (Consul. Eccles. TOM. IX consult. 169 num. 9 et seq.) must be applied: (i) The author, in the aforementioned passage, states: "However, it must be held that this care, at least habitually, and the title thereof, reside with the Chapter, while the actual exercise thereof resides with the Archpriest." This is proven first from the very erection of the parish church into a collegiate church, in which there were established one Archpriest, holding the principal dignity, who was to exercise the care of souls by himself, and twelve Canons, who, together with the Archpriest, constituted the Chapter of that same collegiate church. Therefore, it follows that the care of souls, which resided with the parish church, is, in property and title, with the same church erected into a collegiate church, and with its Chapter, which is constituted of the Archpriest and the Canons. See Rom. cons. 325 n. 2 and Gabriel cons. 199 art. 7 lib. 2. Furthermore, because in the Bull of erection of the collegiate church it is stipulated that the care must be exercised by...

[*Latin ed. p. 74*]

74. DISMEMBERMENT. Relying on the authority of other authors, it is stated that, in such matters, habitual care resides with the Chapter. Indeed, if the Chapter has jurisdiction over the affairs of the Church and the privileges of the parish, and if the Church is subject to the preeminence and precedence over all other churches in the same city, then it follows that the Chapter must also exercise these preeminences and precedences. However, these arguments are presented abundantly, as it is explicitly stated in the decrees of the Holy Office and in the letters of Innocent XI that the Church of George is a distinguished collegiate church, and that it is due the precedence that is fitting for such a church, and that its Archpriest should receive it. This demonstrates that the property of care resides with the Chapter, and that the actual exercise and administration of that care rests with the Archpriest. (Lott, d. 1, qu. 14, n. 101 and following; Rota, Dec. 316, p. 4, tom. 2, Rec.; and Archpriest exercises care as a minister of the Chapter and the College, Gabriel, loc. cit., n. 10 A). Furthermore, because in the Bull of erection, one hundred scudi annually are assigned to the Archpriest from the fruits and goods of the Church for the purpose of establishing the collegiate, while all other fruits, revenues, rights, dues, emoluments, censuses, possessions, properties, and goods of the same Church are applied to the Chapter for the endowment of the canons and benefices, it is also inferred that habitual care resides with the Chapter. (Barbos, ad Conc. Trid. Sess. 24 de Ref. c. 4, n. 22; Cavaler, dec. 595, n. 2 and 3; and dec. 289, n. 2; Rota, dec. 202, n. 10, p. 1, Rec.; and dec. 204, n. 2, 2; and it was declared by the Holy Congregation of the Council in Coimbra, on November 14, 1646). Finally, because the portion mentioned has been assigned to the Archpriest, and because the other fruits, especially the tithes, first fruits, and offerings, are received by the Chapter, it is an undeniable sign

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that habitual care resides with the Chapter, and that its property and title belong to it. (Abb., in c. pastor, n. 2, de his quae fiunt a Prael.; Lott, d. 1, qu. 20, n. 1, 2, 6). The same author, §§ 13-15. It does not matter that in the Bull of erection, it is not stated that the care of souls has been united and assigned to the canons. Because it is clear that the care of souls of the parish church, which has been erected into a collegiate, has been transferred to the collegiate itself, to be exercised by the Archpriest. Therefore, since the collegiate church is constituted by the College and the Chapter, and is an individual and inseparable entity with it, it manifestly follows that the care of souls, with respect to property, resides solely with the College and the Chapter that constituted the collegiate church; while the actual exercise of that care remains with the Archpriest. And so, it would not even matter if in the provisions obtained from the Apostolic See for such an Archpriestship, it is stated that the care of souls belongs to the Archpriest. Because it is a description of the provisions, which should not prejudice the Chapter; and in any event, it should be understood that the actual care remains with the Chapter, which has habitual care. (Duran, de. 214, n. 5 and following; and Rota, dec. 376, n. 9, p. 4, tom. 2; and dec. 445, n. 9 and 10, p. 5; and in Rome, Juris Parochialium, December 4, 1651, cor. Celso).

[*Latin ed. p. 75*]

DISMEMBRATION. 75. It possesses precedence over all other collegiate churches in the same city. For these words clearly indicate that the privileges of the Church of St. George pertain to it, as a collegiate church, independent of any cure, whether actual or habitual. Furthermore, the exercise of these privileges cannot be restricted to a single archpriest; indeed, in the second article concerning the procession of the Body of Christ, it is stated that the carrying of the Body of Christ pertains to the Prefect of St. George, by reason of his highest dignity, and in his absence, to another dignity of the same collegiate church in the next order. It cannot be objected that what has been legally decided between the Chapters of St. Peter and St. George cannot be extended to other churches; for if the Chapter enjoys such privileges and the right to perform functions in the rival collegiate church and autonomous parish of St. George, then all the more must it be held that it possesses this right with regard to the filial and suffragan church, and one entirely dependent on it, as has been the case from ancient times with the Church of St. John. Moreover, the Chapter absolutely maintained its right to perform functions in the filial churches, a right established by custom, which has existed from time immemorial and is clearly demonstrated by numerous documents, against which the efforts of the procurators have never been able to prevail; for all judgments of ecclesiastical power, unanimously, have confirmed the Chapter's right, even when the procurators of St. John have opposed it. Finally, there is the decree of the current Bishop, N., issued during his visitation in the year 1874. The documents presented

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also confirm the thesis, demonstrating how and to what extent this right to perform functions has been the cause of objections; for all these objections are nothing more than the persistence of the procurators and their attempts to undermine the right and possession of the Canons. The very law of balance invoked by the Bishop against the Chapter, in fact, serves to uphold the Chapter's right; for since the Chapter of St. Peter exercises this right in all its suffragan and filial churches, it is necessary that the Chapter, whose privileges are diminished by the secular arm, should possess no lesser faculties.

[*Latin ed. p. 76*]

76. DISPUTATION. But before the Church, these matters must always be held to be true, as Pope Innocent XI has confirmed. Furthermore, the observance, which by itself alone provides a better title, becomes invincible whenever it is supported by a very solid title. Indeed, in the case under consideration, the decree of the Congregation of Rites and the Bull of Innocent XI provide the foundation for the observance, and no foundation can be more valid. Thirdly, the decree of the Ecclesiastical Judge on the subject matter, issued in the year 1634, was cited; in which it was explained that the wording properly extended the Church of St. George to all its filial churches, and therefore, everything that could be done in the proper Church of St. George could also be done in all other filial churches. Therefore, the argument was decided in the case that the Bishop had acted primarily against the law in performing functions, and that these functions should not be performed in foreign churches. For the right that the Chapter of St. George claimed was not concerning foreign, but its own, mother churches; its own, indeed, in the sense of the law and in fact: since it is clear that in the 12th century, one Church of St. George in the city of M. was placed under the immediate protection of St. Peter and the Apostolic See, while all the other churches of that city remained subject to that one; and that only from the year 1504 did a parish exist in the Church of St. Peter. With these and other arguments presented by the Chapter (which, however, we deemed it possible to omit), the Most Eminent Fathers, for the twofold order of the primary questions, were presented with the same formula of questioning twice, BOTH IN THE FIRST AND SECOND QUESTION: Whether one should adhere to or depart from the decisions in the case. They gave their answers in the general assembly on December 20, 1879: "Ad L. In the decisions, and furthermore; with a firm obligation for the Bishop to establish a secure and appropriate parish, and to impose on the same parish priest the duty of presenting to the Church of St. George, on the feast of the Titular and Principal Patron, a cierge of three hours, as a sign of its being a mother

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church."

[*Latin ed. p. 77*]

DISMEMBERMENT. 77 Regarding II. In Desio and elsewhere. After considering all these matters, you can CONCLUDE: I. The distance and difficulty in accessing the parish church, as well as the excessive number of people, are among the primary reasons for dismemberment. II. The greatest favor for dismemberment is currently found in the case of the dismemberment of a parish to which the Council of Trent, Session 21, Chapter 4, on reform, provides a foundation. III. It is not sufficient to provide a suitable chaplain for the care of souls; for chaplains cannot equal the parish priests, who know their flock and can attend to them more closely and appropriately. IV. However, in deciding on dismemberments, the parish priest must be consulted above all, according to a proper constitution, without which a new parish cannot be erected, as stated in the same Council of Trent, Session 21, Chapter 4, on reform. V. A suitable [church] must be available for the new parish, unless it is one that is already secure. (1) (1) It has come to our attention, through a decree of June 28th of the current year, that four full members were delegated by the Chapter of St. George to discuss the interpretation and extension of the resolutions in this case. We refrain from making any further deductions, lest we appear to be trying to anticipate the judgment of the Holy Congregation, which, God willing, will be presented to our readers in due course.

[*Latin ed. p. 78*]

78. CONCERNING THE ABSOLUTION AND REDUCTION OF MASSES. August 23, 1879. By summary proceedings. The priest Aloysius G., patron and rector of the benefice under the invocation of the Blessed Virgin, with the title of the Most Holy Rosary, redeemed the assets of the benefice from the State domain and immediately transferred them to another patron, Francis A., without any compensation, except for expenses already incurred; however, the transferee imposed inconsiderate burdens on the benefice: these burdens consist of daily Masses. After Aloysius's death, his nephew Alexander, the rector of the parish, and the legal heir of the deceased in all respects, was requested by the fabricer (church wardens) to settle the matter amicably in order to ensure the fulfillment of the obligations of the Masses. Since he refused to do so, because he had never possessed the assets of the benefice, and was summoned to court for this purpose, he incurred an unfavorable judgment. Indeed, on June 7, 1878, he was condemned by the Civil Tribunal of Parma to fulfill all obligations inherent in the benefice. After Alexander's appeal proved fruitless, the fabricer were concerned and sought to register a mortgage on the hereditary property. Under these circumstances, Alexander, on November 20, 1878, made a suppliant petition to the Most Holy Prince,

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humbly requesting not only the remission of past omissions, but also the reduction of the obligations to only festive Masses. He stated that in order to facilitate this, the hereditary property was so burdened with foreign funds that the inheritance itself was insufficient to repair past omissions and to bear the burdens with which it is charged. He also added that he was afflicted with an eye ailment. The Bishop affirmed that all of this was true. SUMMARY OF THE FACTS.

[*Latin ed. p. 79*]

ABSOLUTIONS AND REDUCTIONS OF MASSES. 79 Having again petitioned the same Bishop, to precisely report the reason why the Orator should not act against the patron, in order to fulfill the obligations inherent in the benefice, he responded on April 24th of the aforementioned year: Francis A. is burdened by family difficulties and no longer possesses the funds of the benefice, but has sold them immediately upon acquiring them.

Regarding the Orator's petitions for absolution from past omissions, it is necessary to consider his own bad faith, for which reason the Sacred Congregation judged the granting of absolution in Bologna to be inadmissible.

Regarding the service of the choir, November 24, 1787, to question 2: Although he was concerned about inheriting the estate after the death of his father, he did not care about celebrating the Masses; indeed, to avoid this obligation, he not only refused the proposed transaction, but also, when summoned to court and presenting an opposing judgment, did not hesitate to appeal to a higher tribunal.

Furthermore, it must be noted that, if granted, this would circumvent the judgment that so many expenses and labors have produced, and would provide a bad example to the Christian people, while the most pious founders would be abandoned by those who remain alive, seeing that the Church readily grants absolution regarding unfulfilled obligations, even when the civil government, which is not insignificant, has ruled otherwise.

It cannot be said that the Orator's poverty is a just and necessary cause for reducing the Mass obligations; for it is given that any poverty is not sufficient, but only extreme poverty, as stated in Turin, March 30, 1776, and in Messano, January 24, 1778, regarding the reduction of Masses, which, however, is not verified in our case.

Furthermore, it should not be overlooked that the Orator has not received any benefit from the revenues of the benefice. Indeed, in inheriting the estate, he also assumed all the obligations with which it was burdened, according to Law 49 and following, concerning obligations, and Article of the Institutes concerning obligations, which arise as if from a contract. Therefore, although the inheritance may not be paid, the heir is bound to pay from his own property, according to Law 16 of the Code concerning inheritance. The ultimate law of the Code and the Novellae, 1.

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WHAT IS OPPOSED TO THE ORATOR.

[*Latin ed. p. 80*]

80. OF ABSOLUTION AND REDUCTION OF MASSES. Another aspect, however, must be considered, namely, whether good faith is lacking in the petitioner concerning the absolution granted for past offenses. For it should not be presumed that the petitioner, who is a parish priest, has neglected the obligations of the Masses out of bad faith, but rather, to the extent that he did not believe himself to be bound by them, because he never possessed the benefits of the benefice, nor did he retain them. This is so true that, indeed, he even refused a friendly offer, appealed to a higher tribunal after an adverse judgment, and, what is even more significant, neither the fabric [church officials] nor the Bishop insisted greatly on the requested absolution from the petitioner for this very reason. When good faith is present in practice, it is the opinion of this Congregation to grant absolution from past omissions, with some burden attached.

THINGS FAVORABLE TO THE PETITIONER. As for the reduction, it should be considered that, although extreme poverty is listed among the just causes for reduction, there are examples within this Congregation in which a reduction has also been granted due to grave destitution, and sometimes for a time, until the cause persists, as in *the Capellania of St. Julius in January 1819*, and in *Gallien and Perugia, Absolutions and Reductions, December 1828*. Sometimes, even perpetually, if this is found to be combined with illness, as can be seen in *the Absolutions of Masses among the Summaria precum, dated August 8, 1863*. The Bishop testifies to the grave poverty of the petitioner. It would be most unjust if he, who has never derived any benefit from the revenues of the benefice, and who receives almost no income from inheritance, were to be compelled to fulfill all the aforementioned obligations without any remission.

Having briefly considered these matters, it was left to the judgment of the Most Eminent Fathers to decide how to respond to the petition.

RESOLUTION. The Sacred Congregation, having weighed the matter, responded on August 23, 1879: "Three Masses are to be celebrated for the benefit of the petitioner concerning past offenses, but the patron, the cessionary, and the current possessors of the goods are to be held liable, and they are to be reminded to consult their own consciences."

[*Latin ed. p. 81*]

ABSOLUTIONS AND REDUCTIONS OF MASSES. From which are gathered the following points:

I. The Apostolic See is exempt from the obligations of Masses, not only to preserve the will of the founders, but also so that the founders are not defrauded of the precious fruits of the sacrifice.

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II. Therefore, whenever goods of benefices, burdened with the obligations of Masses, pass to another, that same burden of Masses passes to him as well; and the obligation is not extinguished, except by an Apostolic dispensation, granted for reasonable causes.

III. Consequently, unless there is a very serious reason, absolution is rarely granted for past omissions, nor is the reduction of burdens; so that often, the poverty of the heir is not sufficient to obtain this.

IV. For, when one accepts an inheritance, he assumes the obligation of all the burdens with which the inheritance is burdened; and consequently, the smallness of the inheritance does not excuse him from fulfilling the obligations, because in this case, the heir would be obligated to provide from his own resources.

V. However, in some cases, it may seem fitting to grant the heir absolution for past omissions, and a reduction of burdens, either because he is burdened by great poverty, or because, having attached himself to the goods with faith, he considers it right to follow the burdens of the benefice, which the heir himself never possessed.

CONCERNING THE REQUIREMENTS FOR OBTAINING A MAGISTERIAL AND DOCTORAL DEGREE. August 23, 1879.

COMPENDIUM OF THE FACTS. In the Bulla issued by Pope Pius V, establishing the Cathedral Church of *Bulla* in *Hispania*, it is explicitly stated that the person to be appointed to the Magistracy, to whom, according to the provisions of the same Bulla, the offices of Penitentiary and Lector are attached, must be a Master of Theology, and to obtain a Doctoral degree, *DoAeta*, vol. I, page XLVI.

[*Latin ed. p. 82*]

82 CONCERNING THE COMPETITION FOR BENEFICES: It was stipulated in the Decrees. However, despite this stipulation, in the year 1853, special statutes were issued and confirmed by the bishop for these canonries. These statutes state: "A major canon must be a Doctor or licentiate in Sacred Theology... A doctoral canon must be a licentiate or Doctor in Canon or Civil Law." Regarding this discrepancy in the laws, the capitulars inquired from the Apostolic See whether licentiates could be admitted to the competition for the aforementioned benefices. The Apostolic Nuncio, when asked about this matter, responded: "The written law in Hispania prescribes the doctorate degree for these benefices; but the bishops generally admit licentiates and doctors to the competition." He also stated that this practice predates the Concordat of the year 1851; at that time, the doctorate differed from the licentiate only in external solemnities, and not at all in doctrine or studies. Now, however, the doctorate requires a longer course of study, as in other nations. A judicious consideration. Given these facts, it seems prudent to note that the licentiate degree appears to

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be sufficient for the aforementioned benefices, when sought through competition. Indeed, Ferraris states (verb. magister, no. 22) that licentiates are called "masters and doctors," and further, along with Alciato and Leander, maintains that licentiates enjoy the same privileges as Doctors. It should be heard: "Licentiates come as 'masters and doctors,' and therefore enjoy the aforementioned privileges." Alciato in L., to which are added V. S.* Leander de privil. Doctorum, part 4, no. 11, and others. The reason is that licentiates also possess "already excellent and legitimately approved knowledge and doctrine, which serves the common good, for which reason the aforementioned and other privileges are granted to Masters and Doctors; for although licentiates have not solemnly obtained the degree of Master or Doctor, they nevertheless possess..."

[*Latin ed. p. 83*]

MOST EXCELLENT! AND DOCTORAL 83 » » » » the proximate cult which they may solemnly pursue as often as they wish, provided that they have been duly and solemnly declared worthy of it. Therefore, for them, the proximate degree is considered to be that of the licentiate; L. penult. ff. de testam, milit. » The argument is further strengthened by the disposition of the Council of Trent, which, as noted by Ferraris in the aforementioned place, equates Doctors with those licensed in the attainment of dignities and benefices, as stated in session 22, chapter 2; session 24, chapter 12 concerning reforms, and more specifically for our case in session 24, chapter 8 concerning reforms, where it is prescribed that in cathedrals, there should be instituted a penitentiary who is a master or Doctor, or licensed in theology or canon law. No less important is the disposition of the Bull of Sixtus IV, which grants us credit, from which the aforementioned canonries derive their origin in the kingdoms of Castile and Leon; as well as the Motu Proprio of Leo X, which confirms the same Bull. In these pontifical dispositions, the degrees of Doctor and Licentiate are so compared in relation to the granting of these positions that one or the other is declared, in the most explicit terms, to be sufficient. It is best to hear the Rotta in the Canonry of Toledo of May 18, 1584, before Aldobrandino, judge of benefices, part 5, chapter 4, under number 69 - there - "Briefly, it must be said" that by the Bull of Sixtus IV and the Motu Proprio of Leo X, one canonry was established and instituted in the cathedral churches of the kingdoms of Castile and Leon, and that a position should be granted for a Doctor or Licentiate in either law, which is called the Doctoral degree, and another for a Master or Doctor, or licentiate in Theology, which is called the Magistral degree. The arguments gain their greatest force from the fact that at the time when the Bull of Piana was issued, the degree of Licentiate differed from the Doctoral degree only in external solemnity. But that very solemnity with which this degree was conferred in Spain was so great that De-Luca does not hesitate to state that a licentiate in that region

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is equivalent to a doctorate, as he teaches in Praeem. Disc. 35, number 7: "The licentiate is merely a certain act of preparation for the doctorate, as it is in Italy, but in Spain it is done solemnly, and therefore it is equivalent to a doctorate."

[*Latin ed. p. 84*]

84 CONCERNING THE COMPETITION FOR BENEFICES. The same Author, in *De Canonie*, writes: "disc. SS num. 4," Lotter. *De benef. part.*, cap. 7, num. 85 seqq. All of these are restricted by the Capitular Constitutions, which, although not confirmed by the Apostolic See, nevertheless have the force of law, and must be observed in that part in which they do not contradict common law, as the Congregation decreed in Pisauren on November 21, 1861, § 2. It must also be noted that the Cathedral Church of B. must, according to the most recent Concordat, be reduced to a Collegiate Church. A *licentiatus* is not sufficient, etc. Another point, and a true one, is that the Pian Constitution is to be held in such high regard that, for the competition for a vacant Magistral or Doctoral benefice in the Church of B., only Doctors should be admitted. Since the Bull appears to accept this and no other interpretation, we must not depart from it, according to *L. Minime ff. de legib.*, *Afflict. decis.*, 388, num. 8; Gratian, *discept., forens.*, cap. 460, num. 22. And the Capitulars themselves testify that this is the case, reporting that in the years 1805 and 1814, a *licentiatus* was admitted to the competition for these benefices only on the basis of merit, after he had renounced the right he could have obtained over them. And this was done by law and merit, since the written law of Spain requires this quality, as can be gathered from the information of the Apostolic Nuncio; and it is the law that neither a *magister* nor a Doctor can be a *licentiatus*. Whatever Ferraris, along with Alciato and Leandro, may think about this, it is certain that their opinions are refuted by others of no less repute. Therefore, the author adds, quoting from a passage in Ferraris's work, which he has in his own hand, loc. cit., under number 35: "It is absolutely untrue that a *licentiatus* can come in the name of a *magister* or Doctor, and then enjoy all the privileges granted to them." And this is confirmed by the common practice, since a longer course of studies and more eminent doctrine, both in word and in writing, are required to obtain the degree of *magister* or Doctor, and this is not found in the diploma of a *licentiatus*; but we read that only Doctors are declared *magister* or Doctor, according to the very words used.

[*Latin ed. p. 85*]

"MAGISTRAL" and "DOCTORAL" 85. Therefore, if in a former age, those admitted to obtain the aforementioned positions, about which mention has been made, were not considered equivalent to those who had barely, or perhaps not at all, a degree differing from that of Doctors, it

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seems even more appropriate to say this today, as the new system requires a longer course of studies for a Doctor than for a Licentiate, as the Apostolic Nuncio reports. Therefore, if De Luca and Lotterius had lived in this age, they certainly would not have affirmed that these degrees are equivalent. It is necessary to refer to the Council of Trent; for since it expressly mandates that a doctorate, or at least a license, is required to attain certain dignities and benefits, it does not seem that the Fathers of Trent intended to equate Prolytae with Doctors, but only that they should be marked with at least the next higher degree in the doctoral order. Furthermore, the provisions of the Bulls of Sixtus IV and Leo X, which, as it were, enact the law for these positions, do not seem to apply in the region of Spain. For, since the latter provision requires a doctorate, the origin of the granting of the doctoral and magistral degrees of the Church B. must be traced back; but it is known in law that the genus always prevails over the species, whether the genus precedes the species or the species precedes the genus *Fel. in C. 1 num. 10 vers, secunda dispositio col. 7 in fin. de Rescript.* Dec. L. In toto iure 80 col. 3 num. 7 vers, and this conclusion from reg. iur.* Bart, in L. Quaesitum 12 §. Si quis fundum de fund. instr.* Gratian. Discept, for. cap. 9 num. 3; and that one is more bound by one's own laws than by general laws *Castr. consil. 79 lib. 4* Gratian, loc. cit. n. 12. Less can be invoked either the general custom prevailing in other Churches of Spain, or the capitular statutes, or the change of status of the Church. Not custom; for it itself is strict law *Bart, in L. 1 ff. §. Si quis hoc interdicto de itiner. actuq. privat, subindeque de loco ad locum extendi non debet L. 3 in fin. ff. de testam.* Oldrad. cons. 237 col. 1* Surd. cons. 323 num. 13 lib. 3* Gratian, loc. cit. cap. 937 n. 39 seqq. Not the capitular statutes confirmed by the authority of the Bishops, since...

[*Latin ed. p. 86*]

86. Concerning the inability of Pontifical Bulls to reform existing arrangements. It is openly declared that he who cannot abolish something, nor can he reform it. *L. Iurisgentium §. Adeo ff. de Pactis* Bebuff. in *L. Malum* 242 §. *Structuram ad fin. vers.* Gratian, loc. cit. cap. 558 num. 47. But neither the Chapter in establishing its statutes of the year 1853, nor the Bishop in their approval, were able to abolish the Apostolic Constitutions; therefore, neither could the Piana Constitution be reformed by them. Indeed, a change in the status of the Church, for this, perhaps, would seem to be a sufficient reason for obtaining moderation from the supreme Apostolic authority regarding the Piana arrangement; but certainly not for regulating it by its own right. Therefore, having briefly considered these points on both sides, the following doubt was posed to the Most Reverend Fathers: "Can Licentiates be admitted to obtain the Magisterial and Doctoral positions through competition in this case?"

RESOLUTION. The Sacred Congregation, after discussion on August 25,

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1879, decided to respond: "Regarding the future, affirmatively," with the understanding that:

I. It is known by law that a particular case can derogate from a general rule; thus, it is certain that common law or several Roman Pontifical constitutions can be weakened by a new Pontifical Constitution.

II. In the case of the dispositions of Pius IV and Leo X, which stated that Doctors and Licentiates could equally obtain these positions, a derogation occurred through the Constitution of St. Pius V, which requires a doctorate to obtain such a Magisterial and Doctoral position.

III. Neither the custom of other Dioceses, nor the Capitular statutes, even if confirmed by the authority of the Bishop, can derogate from Pontifical Bulls, because neither the Chapter, nor the Bishop, can do anything against the acts of the Holy See.

[*Latin ed. p. 87*]

"MAGISTRALE!" AND DOCTORAL 87 IV. The Fathers of Trent, when they expressly mandated that a doctorate or at least a license be required for obtaining certain dignities and benefices, did not intend to equate licentiates with doctors, but rather to ensure that those aspiring to these dignities possessed at least a license, if doctors were unavailable. V. Notwithstanding the above, it is also permissible for licentiates to participate in competitions for the positions mentioned, since the Sacred Congregation has approved this matter, with the prior consent of the Most Holy Father, thereby derogating in some way from the Constitution *Praebendae Theologicae* of St. Pius V. On September 20, 1879, a Cathedral Theologus Canon, on January 8, 1877, presented the following to the Apostolic See: he, by order of the Bishop, was reading scholastic theology in the seminary, to which neither the clergy nor the people could attend. He therefore inquired, "Whether, besides the fruits of the *praebenda* and daily distributions, he might also receive all other emoluments that would accrue to him if he were present with canonical habit?" The Bishop and Chapter issued a favorable opinion to the Theologus. However, the Ordinary added that he considered it possible for scholastic theology to be read in the seminary, instead of the explanation of Holy Scripture in the Church by the Theologus; and that it had recently come to his attention that the most recent resolution of the Sacred Congregation (1) ordered that the Theologus should explain Holy Scripture instead of theology. At times, the Ordinary also prayed that the Theologus be granted permission to receive the aforementioned distributions. SUMMARY OF THE FACTS. (1) You have the resolution of this kind in Volume IX, page 505 and following. This resolution was confirmed with an addition, and further, after the aforementioned Canon obtained the benefit of a new hearing, as can be seen in Volume X, page 509

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and following.

[*Latin ed. p. 88*]

A THEOLOGICAL QUESTION AND ITS SYNOPTIC ANSWER.

C. A THEOLOGIAN CAN READ THEOLOGICAL WORKS. A Canon theologian can fully satisfy the mind of the Council of Trent, whether he explains Scripture or instructs the clergy in Scholastic Theology; this is what the Canonists Benedict XIV, *De Syn. Dioec.*, book 13, chapter 9, number 17; Fagnan, in *Quia nonnullis*, numbers 29 and following, concerning Masters; Pirhing, in *ius can.*, volume 4, book 5, section 1, number 7; Pignatelli, *consult.*, 62, number 27, volume 3; and Yentriglia, in *praxi*, part 2, article 12, number 27, all teach. This opinion was followed by the Sacred Congregation in *Pacen*, September 28, 1765, in response to the first question in Fulginati, July 3, 1784, and in *Oppiden*, March 15, 1820. Moreover, it is equally certain in law that a Canon theologian, even if absent from the choir on the day he reads, must be considered present in the choir for the purpose of receiving benefits, unless the will of the testator or donor dictates otherwise, as stated in the Sacred Congregation in *Oriolen*, August 5, 1616, and in *Verulana Emolumentorum*, December 15, 1877. Therefore, since a Canon theologian fulfills his office equally by reading Scripture as he would by explaining it in the church, and since he must be considered present on that day for the purpose of receiving benefits, even uncertain ones, unless the will of the testator or donor dictates otherwise, it would seem that a positive answer should be given to the question, and that this answer sufficiently addresses the requests of the Bishop. It is not permissible to change the ancient opinion after the publication of the Encyclical *Inter praecipuas* of Gregory XVI. Those who, relying only on certain resolutions of the Sacred Congregation, now wish to defend this opinion, seem to be mistaken. Since the responses of the Sacred Congregation provide the law in particular cases, they cannot be extended from case to case. This is all the more important in this matter, because if the provisions of the aforementioned Encyclical concerning the obligation to announce the Holy Scriptures are expanded, it is impossible to find the word, or the flight (1).

(1) See Appendix I, volume IX, page 510, regarding the origin and duties of a Canon Theologian. There you will also find, on page 516, section 3 of the Encyclical *Inter praecipuas* of Gregory XVI, which pertains to this type of question.

[*Latin ed. p. 89*]

THEOLOGICAL PRECEPTS 89. THE THEOLOGIAN EXPLAINS SCRIPTURE. It is necessary to observe that the Pontiff, in a newly published Constitution, wished to demonstrate that it is not in accordance with truth

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what the detractors of Holy Scripture assert about the Holy Church, namely, that it prevents the faithful people from acquiring knowledge of the Holy Scriptures, by constantly showing that it has always been the case that Holy Scripture, not only by Bishops, but also by a Canon theologian in cathedral and collegiate churches, should be explained. It is also important to note that the Holy See is accustomed to congratulate Bishops if they have Canon theologians who are performing their duties in the public reading of the sacred Scriptures, and to exhort pastors if, in some places, things have not yet proceeded according to this principle. Therefore, since it is not obscurely evident from this Constitution that the will of the Prince and the mind of the Church is that the people should acquire knowledge of the Scriptures, which must be imparted by a theologian in cathedral and collegiate churches, it is undoubtedly to be held that this principle must be observed as a law in the future, according to the teaching of the text in L. 1 ff. De Constit. Princ., which states: "Whatever has pleased the Prince has the force of a law." And it seems that the Holy Congregation [of the Holy Office] thought in the same way, since, scarcely after the newly published Constitution had been read, it always mandated that Holy Scripture should be explained by a Canon theologian (1). Therefore, if the argument that philosophers draw from induction still holds, there is absolutely no reason to doubt that, after the infamous Encyclical of Gregory XVI, the opinion which is defended by Benedict XIV and which the Holy Congregation has repeatedly maintained, has passed into thin air. Indeed, it can be affirmed that the response of the Holy Congregation establishes a law in particular cases. For the sake of brevity, let us simply observe that the Encyclical was published the day after the nones of May, 1844, and that, scarcely a month later, on July 27, 1844, the Very Reverend Fathers, with whose counsel and assistance the Pontiff had undoubtedly made use of in publishing this Constitution, presented a response in the case of Derthonen, which has been cited several times in this matter, urging the Bishop to ensure the execution of the latest Encyclical of Our Holy Father. How, therefore, could they have asserted this, unless by the authority of the aforementioned (1) Numerous resolutions which fully confirm this doctrine are found in Vol. IX, pages 505 and following, up to page 518, and in Vol. X, pages 509 and following.

[*Latin ed. p. 90*]

90. Would a new law be necessary to establish the privileges of a Theologian? It would not suffice to simply state: "It is not permitted"? However, even if we grant that the aforementioned Encyclical does not prescribe anything new, it is certain that the ancient decrees of the Holy See, noted by Benedict XIV, seem to conflict with more recent ones. But the earlier decrees of the Holy Congregation of the Council state that, in the case of conflicting prior decrees, the later ones alone should be considered and

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attended to: Scarf. ad Ceccop. t. 3 addit. 45 n. 43 in fin., Pignat. t. 1 cons. 108 n. 13, and Rota in Melevitana Decretorum § Mart. 1707 §. final, cor. Ansaldo.

RESOLUTION. The Holy Congregation, after deliberation, responded on September 20, 1879: "Affirmatively," unless the will of the testator or donor dictates otherwise (1).

FROM WHICH WE GATHER:

I. That the Canonically appointed Theologian, on the day he performs his duties, is to receive the full daily distribution of all hours, even if he is not present (2).

II. That the Theologian may enjoy this privilege for the entire day, whether he explains the Holy Scriptures for the whole day, or only in the morning, or only in the evening (3).

III. That the Canonically appointed Theologian is excused from the choir, and is to be considered present for the entire day in which he teaches the Holy Scriptures, as long as (1) From the fact that the Holy Congregation has not mentioned any specific obligation for the Canonically appointed Theologian, one should not conclude that he is permitted, in his place, to teach Scholastic Theology instead of explaining the Holy Scriptures. For it seems to us that the Holy Congregation did not address this matter in the aforementioned document, firstly, because nothing about it was asked in the petition; secondly, because it is certain that the Canonically appointed Theologian cannot perform his proper function unless he explains the Holy Scriptures, as has been indicated in recent resolutions; and thirdly, because the Bishop has explicitly promised that the Canonically appointed Theologian will henceforth publicly expound the Holy Scriptures, setting aside Scholastic Theology."

(2) The Holy Congregation, in Milan, April 29, 1897, lib. 7 decret., and in Bisarchien, September 16, 1857.

(3) The Holy Congregation has stated this on several occasions, especially in Barcelona, praeb. theol. June 2, 1860, per sum. prec. However, if Matins and Lauds are recited on the preceding day after Vespers, he is not to be considered present for Matins and Lauds. Fagnati, cap. Licet de praeb. n. 117. S. C. C. lib. 5 decret, page 7 a terg.

[*Latin ed. p. 91*]

SECTION 91 of the Theological Canons, which his predecessors have used, granting this privilege for only the hour in which they read (1). IV. A theologian, generally speaking, may also receive extraordinary distributions, for the days in which he performs his proper office, unless a chapter constitution, or custom, or the will of those disposing [of the funds] prohibits it. V. It has been granted to a lecturer that he may receive, on the

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day he lectures, in addition to the daily distributions, all other emoluments that would accrue to him if he were present in canonical habit, with the usual condition added, unless the will of the testator or donor prohibits it. (1) Perugia, Theological Seminary, July 30, 1859. FROM THE SACRED CONGREGATION FOR RITES: A WARNING. Although, besides the Litanies of the Most Holy Name of Jesus, the Blessed Virgin Mary of Loreto, and the Saints which are found in the liturgical books, no other have been approved by the Holy See, nevertheless, certain ones are widely printed, which are proposed to the Faithful for recitation in honor of some Saint or mystery, and are often found in books of piety and devotion, sometimes even fortified with ecclesiastical authority. Therefore, the Sacred Congregation for Rites has deemed it its duty to warn the Most Reverend Local Ordinaries not to allow other Litanies to be recited publicly, except for those mentioned above, or others, if any have been recognized and approved by the Holy Roman Church; and also to be careful not to grant their approval for the printing of those books in which Litanies are found that lack apostolic sanction. June 16, 1880. D. CARDINAL BIRTOLINIUS, Prefect of the Sacred Roman Congregation. P. L. RALLI, Secretary of the Sacred Roman Congregation.

[*Latin ed. p. 92*]

92 DECREE concerning Matheran; the cult, from time immemorial, rendered to the Servant of God, Father Giles, of the Order of Minor Friars of Saint Francis, blessed, in Laurentiana. In the meetings of the Congregation for the Sacred Rites, held this day at the Vatican, by the Most Eminent and Most Reverend Cardinal John Baptist Pitra, Promoter of the Cause aforesaid, the following question was proposed: "Whether the judgment rendered by the Most Reverend Archbishop, as delegate, concerning the cult rendered from time immemorial to the aforementioned Venerable Servant of God, or concerning the case exempted by the Decrees of Pope Urban VIII, is to be confirmed, in the case and to the effect of which it is treated?" The Most Eminent and Most Reverend Fathers, entrusted with the safeguarding of the sacred rites, having carefully considered all matters, and having heard the voice and writings of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond: "Affirmatively, that is, the judgment is to be confirmed." June 12, 1880. These matters, having been reported to His Holiness, our Most Holy Pope Leo XIII, by the undersigned Secretary, His Holiness approved and confirmed the Decree of the Sacred Congregation on the 24th of the same month and year. D. Cardinal BARTOLINIUS, Prefect of the Sacred Congregation. Placidus Ralli, Secretary of the Sacred Congregation.

Sacred Congregation: DECLARATION concerning the - DISMISSAL - of the Formula. On the second day of the week, June 21, 1880. The Sacred Congregation, held in the Apostolic Palace at the Vatican on June 21, 1880,

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declared that the word - dismissal - in the Formula means only this: That the work which is dismissed is not prohibited. These matters, having been reported to His Holiness, our Most Holy Pope Leo XIII, by me, the undersigned, Secretary of the Sacred Congregation, His Holiness approved the Declaration. In witness whereof, etc. Given at Rome on June 28, 1880. In the place of the seal. Father Jerome Pius Saccheri, of the Order of Preachers, Secretary of the Sacred Congregation.

[*Latin ed. p. 93*]

93 APPENDIX. NUMEROUS DECREES RELATING TO THE ADMINISTRATION ARE ADDED. II. FROM THE APPENDIX IV (TO BE ADDED TO THE GARDELLINIAN COLLECTION). ENGOLISMEN. To the Most Reverend Lord, the Most Holy Father Pius IX explained that in the parish church of the city of Engolismen, dedicated to Saint Ausonius, Bishop and Martyr, during the octave of All Souls, at the beginning of November, many pious exercises take place for the comfort of the souls in Purgatory, among which several Masses are celebrated, chosen from the Mass for the Dead, on each day of the octave itself, even if the feast of All Souls or a Sunday occurs. Contrary to this custom which was already in force before the great French upheaval, when one and another priest, after consulting with the Most Reverend Lord, wished to observe the rubrics, in the year 1875, the parish priest reported that immediately, admiration and rumors arose among the people, so that the Most Reverend Lord considered it more appropriate to urge the observance of the law, and humbly requested the Holy Father to deign to permit, given the particular circumstances, the continuation of the aforementioned practice in the aforementioned church during the octave of All Souls. The Sacred Congregation of Rites, after mature deliberation, decreed on December 21, 1876, as follows: Prayers are offered to the Most Holy Father. Having therefore made a faithful report of the above to the Most Holy Father Pius IX through the undersigned Secretary, Holiness granted that in the aforementioned parish, Masses for the Dead may be sung on each day of the octave, except for Sundays and the feasts of the first and second class; and with regard to Masses for the Dead which are read, if the feast of the first or second class occurs, the celebration of these is tolerated for the next three years, except entirely on Sundays and the feasts of the first and second class; and it was ordered that the Most Reverend Lord be informed that the intention of Holiness is that she should in every way strive to have the aforementioned practice discontinued, even before the three years, if possible, and that everything should conform to the rubrics of the Roman Missal with regard to the celebration of Masses for the Dead without singing. Rome, January 11, 1877. To the Most Reverend Lord, as Brother Bishop of Engolismen. FROM ZACATECAS. The Most Reverend Joseph Maria de Refugio Guerra, the current Bishop of Zacatecas

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in the Republic of Mexico...

[*Latin ed. p. 94*]

94 APPENDIX. Concerning a doubt presented by the Xicanan Province of North America, which requires a resolution from the Sacred Congregation of Rites, namely: The Office of the Blessed Virgin Mary, "Virgin under the title of Guadalupe, granted as Patroness to the entire Mexican nation, and to the churches of this Province with the complete Octave; but when the Octave sometimes falls on a Thursday of the Four Weeks of Advent, whose Gospel is that of the Feast itself, the question arises: whether, in place of the Homily of the Octave, three Lessons of the Homily of that same day should be read, and at the end of Mass, the Gospel of Saint John, as is done on the Feast of the Expectation of the Blessed Virgin Mary's Birth, when it occurs on a Thursday of those four weeks: or what should be done in this case? Furthermore, the same Sacred Congregation, having heard a report made by the undersigned Secretary, and also a vote from another of the Masters of the Apostolic Ceremonies, decided that it should be written back: In this case, the Gospel with the Homily of the day should be omitted in the Office, and the Gospel of Saint John should be read at the end of Mass. And thus it wrote back and ordered it to be observed on January 27, 1877. CALTAGIRONE. In that part of the Diocese of Caltagirone, which formerly belonged to the Archdiocese of Syracuse, the custom had been preserved since the erection of the see, that when the Bishop celebrated in Pontifical vestments, obedience should be rendered to him by the Dignitaries and Canons by kissing his hand. However, in recent years, due to circumstances, the see of Caltagirone remained without its Pastor for a long time. The Canons of the Cathedral Church of Caltagirone, acting on their own initiative, decided that they would no longer render obedience to their own Bishop, alleging that this ceremony was contrary to the Ceremonial of Bishops. However, when, at the first Pontifical Mass celebrated by the current Most Reverend Bishop of Caltagirone, a great uproar arose among the people due to the omission of this obedience, the news reached the Bishop, who discussed this matter with his Chapter, urging them to render him the obedience due to him according to custom, but without being able to achieve this. Therefore, the praised Bishop appealed to the Sacred Congregation of Rites. Which, after assigning a suitable time to the Chapter of Caltagirone to present its rights to the Sacred Congregation, having carefully considered the rights themselves, and recognizing that the custom in force entirely favored the Bishop, and that it had been arbitrarily interrupted by the Canons, in order to avoid scandals, especially those arising from the aforementioned denial, provisionally, on July 15 of the previous year, decided to issue a decree in the case, namely: That nothing should be changed regarding the custom of rendering obedience to the Most Reverend Bishop in Pontifical vestments by each Canon by kissing his

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hand; saving, however, the same right to act in petition. When the Chapter then wished to exercise its right to act in petition, a place was made.

[*Latin ed. p. 95*]

95. In the Matins, according to the rubrics, after the priest has completed the prescribed actions with the thurible, he shall complete the circuit of the altar, from the Epistle side to the Gospel side, but without omitting any of the twenty-five prescribed actions at their proper time, nor adding any; but he shall simply make the circuit of the altar, so that thus a declaration may be made concerning the sanctity and decorum of the entire sanctuary. According to the practice of the Chapter of this Metropolitan Church, the thurification takes place in the following manner. The celebrant completes three actions towards the cross, three towards the candelabra, two towards the sides, and three towards the altar table on the Epistle side; then he makes the circuit from the back of the sanctuary, and when he arrives at the Gospel side, he completes in the same manner what is prescribed in the rubrics, until the end. These matters having been presented, the aforementioned Master of Ceremonies humbly inquired of the same Sacred Congregation: Can the aforementioned practice be maintained, for the sake of praise, only in the sanctuary of the Metropolitan Church of Granada, given the arguments presented?

APPENDIX II. Concerning a doubt, which was presented as follows to those present: Whether and in what manner is it required by law that the Bishop demand from each Dignitary and Canon the presentation of obedience through the kissing of the hand in Pontifical ceremonies?

When the aforementioned doubt itself was proposed by the Most Eminent and Reverend Lord Cardinal Aloysius Oreglia, appointed by the Holy Father for this cause, at the Ordinary Assemblies of the Sacred Rites held today in the Vatican; the Most Eminent and Reverend Fathers entrusted with the preservation of the sacred rites, having heard both sides, and having considered the rights from various sources, decided to respond as follows: It is established and moreover. And thus they responded, and they ordered it to be observed on February 3, 1877, in GRANADA.

The current Master of Ceremonies of the Metropolitan Church of Granada presented the following to the Congregation of Sacred Rites: In the Metropolitan Church, a certain custom has prevailed, as it is said, due to profanations and insults formerly committed at the back of the altar, so that in the solemn thurification, only in the main altar of the Metropolitan Church, in a sanctuary constructed in such a way that the celebrant can conveniently and decorously walk around it, provided that the four sides are perfectly equal and equally adorned, and this only during the Introit of the Mass, and during the Magnificat in the Vespers, and during the Benedictus.

The same Sacred Congregation, after hearing the opinion of another of

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the Masters of Ceremonies, having considered the report of the aforementioned Secretary, responded in writing: Affirmative.

February 3, 1877 (1).

In RAVENNA. Due to a condition imposed by the Canons of the Metropolitan Church of Ravenna on a certain parish priest of the same city, who was invited to preach in the aforementioned Metropolitan Church (1), the following decree was issued, etc., which you will find in Vol. X, page 575.

[*Latin ed. p. 96*]

96. It appears that, at the time of the assembly, the mozzetta, the rocchetto, and the gold-embroidered stole caused a serious dispute between the aforementioned Chapter and the Assembly of Parish Priests of the same City. For the Parish Priests, who are members of the aforementioned Assembly, believe that they can, according to pontifical concessions, wear these insignia even in the metropolitan church; they were, therefore, greatly aggrieved by this matter, and they appealed to the Archbishop to defend their rights. However, since the matter had become complicated and the parties could not be brought to an agreement, the dispute was brought before the Sacred Congregation of Rites by the Canons. This Congregation first inquired of the Archbishop, so that, after hearing those who had an interest in the matter, he might provide information and express his opinion; afterwards, it also acted upon the appeal of the Assembly of Parish Priests, who complained of abuses by the Canons in the use of privileges, presenting fifty-eight questions for examination to the Sacred Congregation. After the Sacred Congregation had received everything, it recalled each of the questions proposed, both by the Canons and by the Assembly of Parish Priests, to the truth, and understood that the entire dispute could be reduced to a single question, formulated as follows: Whether urban Parish Priests of Ravenna are permitted to wear the insignia granted to them by the rescript of His Holiness Pope Benedict XIII and by the Brief of His Holiness Pope Pius VII, when they are holding sacred assemblies in the metropolitan church, even in the presence of the Chapter. To this question, the Sacred Congregation itself, after hearing the information and the opinion of the Most Reverend Archbishop, and after maturely and accurately considering the rights from both sides, decided to respond: "Affirmatively." As for the other questions proposed, both by the Chapter and by the Assembly of Parish Priests, it responded: "Read." On March 23, 1877. The aforementioned matters were reported to His Holiness Pope Pius IX by the Cardinal Prefect of the Sacred Congregation, and His Holiness deigned to approve and ratify the resolution of the proposed question on March 25 of the same year.

To the Most Reverend Lord, Vicar Capitular of the Territorial Prelature of Santa Lucia del Mela. In a letter addressed to the Holy See, dated March

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14th, you requested that you be granted the faculty to administer the Sacrament of Confirmation, which has not been administered in the territory belonging to this Prelature for seven years. The Sacred Congregation of Rites, after hearing the report of your request made by the undersigned Secretary, responded: "Negatively, and with all due consideration." It is understood that you should be aware that you should, as soon as possible, provide for the administration of this Sacrament, by inviting, and even requesting, some Bishop to confer it upon the faithful of this Prelature, in which you exercise the office of Vicar Capitular. Rome, April 14, 1877.

[*Latin ed. p. 97*]

97 FROM THE CONSISTORY ACTS OF THE CONSISTORY HELD ON AUGUST 20, 1880. His Most Holy Lordship, Pope Leo XIII, after delivering the address which we presented on page 49, proposed the following appointments:

THE METROPOLITAN CHURCH OF GAP, vacant due to the death of the Most Reverend Francis Xavier, formerly Cardinal Apuzzo, the last Archbishop of that See, who died outside the Roman Curia; for the Reverend Father Alphonso Gapecelatro, of the Order of Discalced Carmelites, and the Reverend Fathers Patricio, of Naples, and Philip Nerii, of the Congregation of the Oratory. Having diligently fulfilled the duties of his Order, and having served as Prefect there for almost fifteen years, he has published several books on theological and historical matters, and has been appointed Examiner of the Neapolitan Clergy. He has been affiliated with several Academies, both in Rome and elsewhere, and has been co-opted among the Domestic Prelates of His Holiness, and has recently been appointed Vice-Librarian of the Holy Roman Church.

THE EPISCOPAL CHURCH OF ARA-DEN, vacant under the Archbishop of Tyre, in missionary territories, due to the death of the Reverend Father Joseph Rizzolati, the last Bishop of that See, who died at the Roman Curia; for the Reverend Father Peter Joseph Tordoya, a retired Bishop of the See of Cuzco, in Peru.

THE CATHEDRAL CHURCH OF AREQUIPA, in the Peruvian territory of South America, vacant due to the death of the Reverend Father Joseph Benedict Torres, the last Bishop of that See, who died outside the Roman Curia; for the Reverend Father John Mary Huerta, who is already the Bishop of Puno, by the presentation of the most illustrious Nicholas Pierola, President of the Republic of Peru, by virtue of an Apostolic Indult.

THE EPISCOPAL CHURCH OF EVARIEN, vacant under the Archbishop of Damascus, in missionary territories, due to the succession of the Reverend Father John Peter Boyer to the See of Clermont; for the Reverend

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Father Raphael Mezzetti, a retired Bishop of the See of Leghorn.

[*Latin ed. p. 98*]

98. FROM THE ACTS OF THE CATHEDRAL CHURCH OF SENIGALLIA, I announce the vacancy, due to the death of the Most Reverend Francis, formerly Bishop of that See, outside the Roman Curia; for the Reverend Father Ignatius Bartoli, Priest of the Diocese of Auxima. He was born of legitimate, Catholic, and noble parents in Castrifidardo, in the Diocese of Auxima, and has surpassed the fiftieth year of his age. Having recently received the sacred order of the priesthood and the doctorate in Canon Law, he diligently devoted himself to ecclesiastical duties, especially in hearing the confessions of the faithful. Formerly a Canon of the Chapter of Auxima, he was appointed Pro-Synodal Examiner of that Diocese, and for many years served as Rector of both the Seminary and the noble College of Campana, and also held the office of Professor of Pontifical Canon Law. In Senigaglia, he has until now fulfilled the office of President of the Mastai College-Convent.

FROM THE CATHEDRAL CHURCH OF ASSISI, I announce the vacancy, due to the death of the Most Reverend Paul, formerly Bishop of that See, outside the Roman Curia; for the Reverend Father Peregrino Tofoni, Priest of the Archdiocese of Fermo. He was born of legitimate, Catholic, and honorable parents in the town of Crypta Azzolina, in the Archdiocese of Fermo, and has surpassed the sixtieth year of his age. Having recently received the sacred order of the priesthood, he diligently devoted himself to ecclesiastical duties. For nearly thirty-five years, he was attached to the family of the late Cardinal De Angelis, Archbishop of Fermo, and accompanied him on his travels, whether while he was imprisoned in the Ancona fortress, or while he was in exile in Augsburg. He was a Canon of the Metropolitan Church of Fermo, and until now has relinquished the office of coadjutor with the expectation of succeeding to the fourth Primicerius dignity. He has served as Rector of the Seminary and as Professor of Canon Law there, as well as fulfilling the duties of Pro-Synodal Examiner and Ecclesiastical Moderator of the pious house for the instruction of poor girls.

FROM THE CATHEDRAL CHURCH OF CASTELLANETA, I announce the vacancy, due to the death of the Most Reverend Mariano Positano, formerly Bishop of that See, outside the Roman Curia; for the Reverend Father Caietano Bacile, of the dynasty of Castelioni, Priest of the Archdiocese of Otranto. Born of legitimate, Catholic, and noble parents in the place commonly called Spongano, in the Archdiocese of Otranto, he has surpassed the thirty-sixth year of his age. Having recently received the sacred order of the priesthood, he diligently devoted himself to ecclesiastical duties. He has until now served as Archpriest-Curate in his parish church, and has

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fulfilled the duties of Pro-Synodal Examiner and Vicarious Forane.

[*Latin ed. p. 99*]

FROM HISTORICAL ACTS CONCERNING THE CATHEDRAL CHURCH OF LJUBLJANA: It is vacant, having been relinquished freely by Reverend Father Raphael Mezzetti, and having been completed and accepted by HIS HOLINESS; for Reverend Remigio Paeini, a priest of Colle di Val d'Elsa. He was born in the city of Colle in Etruria, and having surpassed sixty years of age, he was recently ordained to the sacred priesthood, and diligently performed ecclesiastical duties, notably preaching the word of God and hearing the confessions of the faithful. Formerly Prefect of the Seminary of Arezzo, Professor of Rhetoric and Moral Theology, and elected as an ecclesiastical deputy, he was also added to the Examiners for the Synod, and until now he was the parish priest of Saint Mary in Gradibus.

THE CATHEDRAL CHURCH OF EMERITEN in the territory of Venezuela, South America, is also vacant; as previously, it became vacant through the death of the Most Reverend John Hilary Boset, the last bishop of that diocese, who died outside of Rome; for Reverend Thomas Zerpa was appointed to that church on September 29, 1876, but he freely and willingly relinquished the position to HIS HOLINESS before assuming the duties of consecration or taking possession of the church itself; and HIS HOLINESS ratified and accepted this relinquishment; for Reverend Romano Lovera, a priest of the archdiocese of Saint James of Venezuela, presented by the illustrious President of the Republic of Ren§uçla, by virtue of an Apostolic Indult. He was born in the city of Guacara in the archdiocese of Saint James of Venezuela, and having surpassed forty-one years of age. Ordained to the priesthood, and recently awarded a doctorate in sacred theology, he has commendably exercised himself in ecclesiastical duties. He has given philosophical and theological lectures in the archdiocesan seminary, and has administered the parish of Saint Mary of Candelaria, also known as Maracay, in Puerto Cabello, and has been appointed to the archidiaconate in the Metropolitan area of Venezuela. He has also relinquished the position of missionary and of San Biegp and Los Fyuayo in that archdiocese.

THE EPISCOPAL CHURCH OF HJUERO- is vacant under the Archbishop of the Synodal Province in the territories of the infidels, through the death of the Most Reverend Joseph Chevalier, the last bishop of that diocese, who died outside of Rome; for Reverend Leone Belouino, a priest residing in the diocese of Briocense, has been appointed as an Auxiliary, according to the decree of the Sacred Congregation, Consistorial, approved by the aforementioned HIS HOLINESS, to assist the Archbishop of Port-au-Prince in Haiti in that territory, so that he may be of assistance to him in pontifical and other pastoral duties in that city and archdiocese, fruitfully

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and healthily.

[*Latin ed. p. 100*]

100 FROM DECREES concerning matters to be carried out by the Lord. He, born of legitimate, Catholic, and honorable parents, reached the age of fifty-four. Having recently received the sacred order of the priesthood, he diligently applies himself to the performance of ecclesiastical duties. He was chosen as a Canon for the honor of Briouac in the Cathedral, and as the Curate of Montcontour, in that diocese, a position from which he has now resigned, having spent nearly eighteen years there in sacred ministry. The Cathedral Church of Bo-vacan, vacant due to the death of the Most Reverend Henry Gaio, the last Bishop to die outside the Roman curia, is now assigned to the Reverend John Baptist Porrati, a priest of the diocese of Alexandria of the States. He, born of legitimate, devout Catholic, and honorable parents in the town of Castellati in the diocese of Alexandria of the States, reached the age of fifty-five. Having received the order of the priesthood and the doctoral degree in sacred theology, he has dedicated himself to the performance of ecclesiastical duties, especially in hearing the sacramental confessions of both sexes. For many years, he was devoted to the theological teaching at the diocesan seminary, where he served as Prefect and Vice-Rector, and later as Rector, having also been assigned among the pro-synodal examiners and as a Canon of the Collegiate Church of Saint Mary of the Court and of Nive. He has now been appointed as a Canon Penitentiary of the Cathedral of Alexandria. Furthermore, the following churches have been provided for by papal briefs and publicly announced: The Archiepiscopal Church of H- in part. infid. is assigned to the Reverend Michael Heiss, transferred from the seat of La Crosse and appointed as coadjutor, with the future succession of the Reverend John Martin Henny, Archbishop of Milwaukee. The Episcopal Church of SozusEN. in part. infid. is assigned to the Reverend Francis Kerril Amherst, already the Bishop of Northampton. The Cathedral Church of Medioburg in England is assigned to the Reverend Richard Lacy, a missionary of that city. The Cathedral Church of Northampton in England is assigned to the Reverend Arthur Riddell, a missionary at Scarborough from the Diocese of Middlesbrough. The Cathedral Church of Colum- in the United States of America, from the province of Cincinnati, is assigned to the Reverend Anthony Watterson, a priest born in Pennsylvania. The Episcopal Church of Trica- in part. infid. is assigned to the Reverend Bonaventure Portillo, from the Order of the Franciscans, appointed as a Vicar.

[*Latin ed. p. 101*]

101 FROM THE ACTS OF THE APOSTOLIC CONSISTORY: The territory of the lower Califoria, detached from the Diocese of Monteregie. The EPISCOPAL CHURCH of Canathen, in a pagan region, with the favor of

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the Reverend Father Ludovici Gaspar, of the Society for Foreign Missions of Paris, elected as Apostolic Vicar of Northern Cocincina. The EPISCOPAL CHURCH of Botren, in a pagan region, with the favor of the Reverend Father Henrici Butté, of the Society of Jesus, elected as Apostolic Vicar of Southern Iche-ly. The EPISCOPAL CHURCH of Abilen, in a pagan region, with the favor of the Reverend Father Hariolis Fraysse, of the Society of Mary, designated as Apostolic Vicar of New Caledonia. The EPISCOPAL CHURCH of Crisopolitan, in a pagan region, with the favor of the Reverend Father Ioannis Coadou, of the Seminary of Foreign Missions of Paris, deputed as Apostolic Vicar of Mayssocar. The EPISCOPAL CHURCH of Ceramen, in a pagan region, with the favor of the Reverend Father Patritii Manogue, elected as coadjutor with succession to the Most Reverend Father Eugenii O'Connell, Bishop of Yallispraten, in the United States of America. The EPISCOPAL CHURCH of EMMAUS, in a pagan region, with the favor of the Reverend Father Iacobi Laird Patterson, a priest of the Archdiocese of Westmonasterien. To the Domestic Prelates, His Holiness. Finally, the Most Holy Father was petitioned by the Metropolitan of Capua, concerning the Pallium for the Church.

[*Latin ed. p. 102*]

FROM THE HOLY CONGREGATION FOR THE DISTRIBUTION AND ADMINISTRATION OF RESOURCES, August 23, 1879. SUMMARY OF THE CASE. The Chapter of the Cathedral Church, from the earliest times, possessed habitual and actual care over the entire city; and while the Canons exercised the care of souls, they were not only exempt from tithes, but also enjoyed distributions, both ordinary and extraordinary. In the year 1857, by an Apostolic Rescript, entitled "Brevis," it was decreed that, in order to provide suitable support for the parish priests, six canonical prebends should be suppressed, and that six new and distinct parishes should be established throughout the city, with one of these being within the Cathedral, to be governed by the Archpriest, the second in dignity. Consequently, this second in dignity received abundant benefits. Indeed, it not only possessed the right to a prebend, but also to one-sixth of the prebends that had been suppressed by the Bull; so that the fruits of the Archpriest's prebend amounted to the sum of 3,301.52 livres in the present funds. The Chapter, bearing this ill-feeling, through its president, submitted a petition to the Holy Congregation on September 16, 1878, requesting that it resolve the doubts which are written below.

DISCUSSION OF THE QUESTION:

WHAT IS DUE TO THE PARISH PRIESTS?

It appears that the distributions derived from the present funds are an

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obstacle to the first chapter, concerning the "der. non resid." (derelict, non-resident) in number 6. For in the decree of Boniface VIII, these words are read: "We decree that the distributions themselves..."

[*Latin ed. p. 103*]

DISTRIBUTIONS AND REVENUES 103, whether they consist of material goods or not, are granted to the Canons and other beneficed and clerical members of the Church itself, who are present at them. This was decreed by Boniface VIII and revived by the Council of Trent in the well-known Chapter 12, session 24, concerning Reform, establishing an undeniable and unchangeable law regarding the distribution of revenues, notwithstanding any statutes or customs: "Indeed, the Fathers of Trent decreed that those who were present at the prescribed hours should receive the distributions; the others, however, should be excluded from them, without any collusion or remission." And this is rightly so: distributions are due to clerics because of their personal service, and not with respect to their title, nor are they given as to a Canon, but as to one who is serving the divine. If, however, the Sacred Congregation sometimes granted daily distributions to those who were absent from the choir due to the exercise of pastoral care, it must be diligently considered that this was only done for those whose canonical duties included the burden of pastoral care, as Barbosa teaches in *De Can. et Dignit.*, chapter 24, number 11. The author of *Moneta de Distrib.*, part 2, question 11, number 69, also held this view. The Sacred Congregation also ruled in Montreale on December 6, 1732, and in Perugia on June 25, 1765. However, this cannot be said in all cases, because the Archpriest was granted a portion of the extinguished prebends, which had been suppressed for the erection of parishes, and that portion is distinct from the Archpriest's prebend. Furthermore, it would not be just or reasonable that he, already burdened with other labors for which he receives a reward, and not a small one, should also enjoy all the privileges that are granted to pastors, to whose dignity or canonry the burden of pastoral care is attached. The same principle seems to apply even to distributions given to those present. Especially because, in order to benefit from these, not a fictitious, but a real and physical presence of the beneficiary is required, as the Sacred Congregation teaches extensively, especially in the document *Reatina Jubilationis* of April 28, 1770, §. On the contrary, it is stated that "Annual emoluments, and those of processions and other similar events, which are left to the Chapter by the presumed will of the testators, should be given to those Chapter members who have offered prayers for the souls of the benefactors."

[*Latin ed. p. 104*]

104. REGARDING DISTRIBUTIONS AND REVENUES: Concerning those who are absent, it should be noted, according to the disposition

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of the law, that only those who are actually present should receive the benefits, those who, due to the absence of others, undertake a greater labor in the choir. For these benefits are given as a reward to those present, and are taken away as a penalty from those absent. Hence, Barbosa, in his work on Canon Law and Dignities, chapter 23, paragraph 18, states: "Whether the distributions belonging to the absent should be given to those who are actually present, or to others who are considered present by the fiction of law, because they are absent due to infirmity or are engaged in the service of their Church... it is clear that they should only be given to those who are actually present," as stated in chapter one, verse one, of the De Clericis non Residentibus. Bonacina, in his work on Distributions, question last, point 1, paragraph 6, and in his work on Benefices, page 3, chapter 2, paragraph 465, agree with this. These Doctors are moved to defend this opinion because the absent, for a legitimate reason, are considered present in the choir for the purpose of receiving their distributions, as stated in the Council of Trent, session 24, chapter 12; but not the distributions lost by the negligent. For it is fitting that these should accrue to those who, in the absence of others, undertake a greater labor. Therefore, considering all of these things, the Archpriest should rightfully distribute the benefits among those present, and also the benefits lost by the negligent.

WHAT IS DUE TO THE PAROCHIAL VICAR: Another point, based on the most learned law, is that the Parochial Vicar, who is entrusted with the care of souls, should be considered as present in the choir as if he were participating in the divine service, as stated in the Tridentine Council, session 22, chapter 3. Therefore, he should not only participate in the ordinary distributions, but also in the extraordinary ones, as taught by Scarfant, book 2, title 10, paragraph 9 and following. "And the person of the Chapter is all the more certain to receive distributions if he is burdened with the care of souls and performs parochial duties during divine service." Take note of this, as Bona, in his work on Distributions, book 2, question 5, paragraph 7, concludes absolutely, and as the Council of Trulle, in his work on the Decalogue, book 8, chapter 2, decree 7, declares, and as the Holy Congregation has declared, citing Nicolai in his Glossary, volume V, Distributions, number 13. And rightly so: for if an indulgence is granted for the participation in all the fruits and benefits of the...

[*Latin ed. p. 105*]

DISTRIBUTIONS AND REVENUES 105. Extraordinary distributions are also permitted, as declared by the Sacred Congregation of Councils in Burgos, on the feast of St. Dominic, April 19, 1704; indeed, if it is granted to receive, in addition to ordinary distributions, any other emoluments, as in Aquapendente, September 27, 1559, in response to question II; in Perugia, July 17, 1668; in Rome, January 29 and March 5, 1678, there appears to be no valid reason to deny these to the Archpriest and Parish

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Priest, who, while engaged in the care of souls and exercising the duties of his office, ought to be considered, in his own dignity, as deserving of the same benefits as a canonically instituted Canon, both present and interested; Garcias de benef., p. 3, chapter 884. Moreover, it is established that a parish priest, absent from the choir due to the duties of his office and the exercise of the care of souls, is entitled to receive the customary benefits. For it is clear to all that these emoluments are granted to those present in the choir by the fiction of law. Indeed, they are also granted to Canons who, by dispensation, are absent due to infirmity, as can be seen in Rome, May 5, 1708, in response to question II, in which it was asked: "Whether to the same Canon (absent from the choir and other divine offices by dispensation due to infirmity) it pertains to receive, for his allotted share, also the increase of those distributions and common funds which increase for those who are absent or on leave, and from what date the aforementioned are due in this case?" - The response was: "Affirmatively, from the date of the granting of the dispensation." - Also, these are granted to Jubilate singers, as can be seen in Aquapendente, March 2, 1697, in response to question III, provided that they do not violate particular constitutions and the customs of the Church. Therefore, Scarfantonio, speaking of Canons absent from public psalmody for a reasonable cause, and having doubts as to whether these distributions are due to them, which other Canons, absent from the choir without a reasonable cause at that time, lose, declares that he holds the affirmative opinion against Bonacina and others. And this opinion is also considered probable by Castr. Pal., vol. 2, and Trullen. in decis., chapter 8, number 7; and Benedict XIV, in Instit., 107, refers to a decision of the Sacred Congregation of Councils, dated April 18, 1511, written in L. XI Dec. 98, which held that those who are absent from the service of the choir due to infirmity, or another cause, ought not only to receive the daily distributions of their Canonry, as if they were present at the appointed hours, but also to receive an increase.

[*Latin ed. p. 106*]

106. REGARDING DISTRIBUTIONS AND REVENUES: It is understood that those who are absent forfeit the distributions to which they would otherwise be entitled. From this, it is inferred that the Parish Priest, perceiving the absence of someone from the choir due to the exercise of the care of souls, will receive the benefits that would have accrued to the absent person, unless the absence can be called into question for a legitimate reason. Furthermore, this observation removes all bitterness on this matter. Observance is a faithful interpreter of human dispositions and holds the greatest value in the distribution of material goods. Moreover, it has been ascertained that, with observance, those fulfilling the Capitular office in the Parish have been considered to be present in the choir, and consequently,

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have received the ordinary distributions and other revenues. Therefore, the same right should be granted to the Archpriest, since he is entrusted with the care of souls by the Capitulars; and this all the more so because, since the year 1857 in which he obtained the office, he has been in peaceful and continuous possession. Furthermore, it must be observed that the Capitulars deduct from the Archpriest's revenues, omitting those same revenues, which subjects him to burdens that greatly diminish the amount. Now, regarding another question in which it is asked whether the Archpriest is obligated to contribute one-third of the fruits of his prebend for the sake of daily distributions. It seems that an affirmative answer should be given. Indeed, it is well known in law that he who receives a benefit is obligated to bear the burden associated with it (Reg. 55 de Reg. iuris in 6). The reason for this principle is based on natural equity, which the Emperor himself recognized, stating that it is neither permissible nor tolerable for someone to accept profit and not to endure the associated inconveniences (L. un. %. 4 ad fin. C. de Caducis tollend. - ibi - "Nor is it permissible for someone to accept profit but to despise the burden attached to it"). Therefore, since the Archpriest derives benefit from the distributions by reason of his pastoral office, it must be held that he is obligated to bear the burden of contributing to his prebend. Indeed, Cardinal de Lucca teaches in Lib. 14, part. 5, adn. ad Sac. Conc. Trid. disc. 15, "in these decrees for Cathedral churches... for better service and worship."

[*Latin ed. p. 107*]

DISTRIBUTION OF INCOME AND FRUITS 107 » » » » » » » » It is arranged in such a way that, if daily distributions were to be made, so that Canons and Beneficiaries, and other ministers, would not be attracted to the service, because indeed, due to their inadequacy, they are easily neglected, then one-third of the fruits of each benefice, with due proportion, so that it is an equal, not an unequal, contribution, should be assigned to the daily distributions. » Nevertheless, it does not seem to be restricted to one-third of the fruits of the entire benefice itself, but rather to the contribution by which each Canon, in our times, remains indebted to the Church according to his income. Otherwise, the Canons would seize the profit to the detriment of the Archpriest; which is a thing that no one can fail to see is most unjust. With these things explained, it was left to the judgment of the Learned Judges to decide what answer should be given to the questions. I. Whether the Archpriest, being absent from the choir due to the exercise of the care of souls, is owed a share in the daily distributions, as well as in extraordinary and occasional revenues in such a case. II. Whether the same Archpriest, being absent as above, is owed the failings of absent Canons in such a case. And to both, an affirmative answer. III. Whether and in what quantity the Archpriest should contribute from the fruits of his own benefice for the daily distributions in such a case. RESOLUTION. The Sacred Congrega-

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tion, on August 23rd, gave the following answers: To the first, affirmatively, provided that it does not contradict the will of the testator or donor. To the second, affirmatively. To the third, affirmatively, only for one-third of the canonical fruits of the benefice. FROM WHICH WE GATHER. I. Chorale distributions are not due to clerics with respect to their title; but rather for the sake of personal service, or because they minister to divine things.

[*Latin ed. p. 108*]

108. CONCERNING DISTRIBUTIONS AND REVENUES, according to the decrees of Trident: Those who have attended the prescribed hours shall receive the distributions; the rest shall be deprived of them, without any collusion or exemption.

11. However, according to Trident, Session 22, chapter 5, the parish priest, during the time in which he resides and ministers in his assigned church, is to be considered present, and to participate in the divine services; therefore, he is entitled to receive both ordinary and extraordinary distributions.

111. For, if a canon, whether jubilant or absent due to illness, can receive ordinary and extraordinary distributions, as well as any emoluments, according to the practice of the Sacred Congregation of Councils, there appears to be no reason why such a privilege should be denied to a canon who is a parish priest and performs parochial duties during the appointed times.

IV. Furthermore, no one who is physically absent for a reasonable cause should be considered legally present through a fictitious pretense, and should profit from the omissions of those who are negligent; but how can a canon who is a parish priest be deprived of these benefits when he is absent for the good of souls, when there is no more reasonable cause for his absence?

V. It is necessary that everyone contribute equally for the daily distributions, according to the very nature of justice; for it is intolerable that someone should not wish to bear the inconveniences when they enjoy the profits and benefits.

VI. Therefore, it is clear that a canon who is a parish priest and performs parochial duties is entitled to all distributions, except where the will of the testator or donor dictates otherwise (1); and the canon himself should contribute for the daily distributions, for one-third of the canonical portion.

(1) The Sacred Canons, while granting that those who are absent from the choir for a reasonable cause may be considered legally present and may receive all ordinary and extraordinary distributions, add the limitation: unless the will of the testator or donor dictates otherwise. Indeed, the will of the testator or donor is considered sacred and inviolable, and they may stipulate that only those who are physically present should participate, as is seen in Novara, Jubilares, October 2, 1677. In this matter, the following

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question was proposed: "Whether two canons, jubilant, should receive the emoluments of the anniversary celebrations, which are made within the year, even if they are not present?" The answer was affirmative. However, the matter was again proposed on January 29, 1881, and it was decided: "In the decrees concerning fixed anniversaries, and in those in which it has not been stipulated that only those present should participate, as is read in lib. 42, fol. 44."

[*Latin ed. p. 109*]

109 CANONICATE. On September 20, 1879. By summary petition. A Canon, Father F., now deceased, desiring that the canonical position, which he would leave by death, be filled by a priest he favored, promised to provide, as a pension, one-tenth of the fruits of the benefice to the son of a certain woman, so that she might obtain from the patron that the aforementioned priest be named to the said position. The patron, asked by the woman, agreed, and the priest Vincent G. obtained the canonry under the condition of paying Salvator T. one-tenth of the fruits annually. Now, the beneficiary and the pensioner, having presented a petition to the Apostolic See, request that, considering good faith, the same be granted to them concerning the past, and that it be permitted for the Canon to retain the benefice and for the pensioner to receive the pension, lest scandal and astonishment arise among the people, against which the aforementioned benefice should be deprived. SUMMARY OF THE CASE. Synoptic Discussion. POINTS OPPOSED TO THE PETITIONERS. Firstly, it must be noted that when anyone gives, or confers, or resigns a benefit ecclesiastical, or presents it, or elects [someone], or institutes and confirms an elected person with certain confidence and obligation, that is, with an expressed or tacit agreement or condition, that he himself or another, at a certain time, should yield it again, or grant a pension, or a certain part of the fruits, he commits secret simony, as is clearly evident from Constitution 85 of Pius IV, "Romanum Pontificem," and from Constitution s. of Pius V, "Intolerabi-".

[*Latin ed. p. 110*]

From the Canons, as cited in "Us" from chapter 5, "Sicut tuis SS et argum." chapter 5, "Veniens," 49, "De Simonia." The Sacred Congregation in Hurien, April 4, 785, §1, concerning Simonia. Barbosa in chapter "Nemo num. 4 De Simonia," Layman, "De Simonia," §6, number 65, with the entire school of canonists. And this also applies to benefits of patronage, even if the presented candidate is unaware of a simoniacal agreement having taken place: chapter "Si alicuius," 59, "De elect." chapter "Nobis," 27, "De Simonia." J. Ferraris, "verbo Simonia," article 2, number 9. The Sacred Congregation in Urbinaten, December 4, 854, §1. Indeed. When these things are considered, it becomes clear in the case that both the petitioner and the

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patron of simonia incur a secret fault, and therefore they cannot escape the penalties prescribed in the aforementioned Constitutions of Pius IV and V against simoniacs, and consequently, by this very act, they incur excommunication, which is reserved to the Supreme Pontiff, as stated in Bulla Apostolicae Sedis, §9. It is known that a priest, G., obtained a benefice through simonia and proved to be unfit for obtaining any other benefices in the future. Furthermore, it seems that both the petitioner and the patron are obligated to restore the fruits obtained through simonia, which must be applied to the Apostolic Camera. Chapter "St quis neque caus." 4, question 4, chapter "Matthaeus" 28, "De Simonia," Extravagant, "Cum Detestabile" 2, "De Simonia." Pius V, in the aforementioned Constitutions, and in Constitution 6, "Cum primum," and the benefice in this case is reserved to the Supreme Pontiff, so that no one else can grant it, as stated in the aforementioned Constitutions of Pius IV and V. Absolution does not seem to be granted unless the priest, G., first relinquishes the benefice, and both he and the patron, S. C. C., restore the fruits received, as taught in Caurien, Censurarum, July 4, 874; in which, when considering absolution for admitted simonia, the following question was proposed: "Should the Holy See be consulted for absolution and validation of the title of the benefice?" The response was: "Let him relinquish, let him restore the fruits received, and then let him pray."

THINGS THAT FAVOR THE PETITIONERS. On the other hand, it can be said that ignorance of the censures excuses one from incurring them, although one commits a very grave sin by acting against the law: chapter "Ut animarum periculis" 2, "De Constit, in VI," because contumacy is required to incur a censure: chapter "Qua fronte," 45, "de appel-"

[*Latin ed. p. 111*]

CANONICATUS iii latiori; contumacia autem non adest, ubi ignorantia censurae habetur, cum ignorantia excuset a contemptu et contumacia. L. Si ignorans 50 ff. Locati. Praeterea, a crimine simoniae excusat ignorantia invincibilis, quia ad peccatum requiritur consensus; ignoranti autem nullus est consensus. L. Si per errorem 45 ff. De iurisd. omnium iudicum; L. Non idcirco 9 C. De iuris ac facti ignorant. Cum autem ignorantia a culpa simoniae excuset, excusare etiam a poenis dicenda est, ubi enim nulla est culpa, ibi nulla esse debet poena. Arg. leg. Si putarem 81 .ff. Ad leg. Aquiliam* leg. Sancimus 22 Cod. De poenis* Cap. Cognoscentes 2 De Constit. - ibi - « Rem quae culpa caret in damnum vocari non convenit. » Cap. Sine culpa 23 De Reg. Iur. in 6 - ibi - « Sine culpa* nisi subdit causa* non est aliquis puniendus. » Igitur, cum in facto constet Oratores in bona fide fuisse, et ignorasse pactum simoniacum conventum inter titularem et famulam, sciente et approbante patrono, viderentur immunes a quavis censura et culpa, aut saltem ab eisdem absolvendi. Suarez tom. 4 de Relig, tract, ul. de Simon. cap. 57 n. 39 Thesaur. de poenis part. 2 verb. Simonia §. 2 circa finem* Reiff,

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lib. 5 tit. 3 n. 278 et alii communiter. Sacerdos autem G. etiam in possessione beneficii manutenendus videtur, quia alia quacumque provisione caret ad honeste vitam sustentandam, et quia si beneficio expoliaretur, scandalum enasceretur inter fideles, quod omnino vitandum amico foedere omnia iura clamant. Hisce obiter in iure et in facto delibatis, remissum fuit E E . P P . sapientiae decernere quonam responso Oratorum preces dimittendae essent.

RESOLUTIO. Sacra Concilii Congr. sub die 20 Septembris 1879 censuit respondere: Praevia absolutione saltem ad cautelam* pro gratia sanationis favore utriusque* attenta bona fide* ita tamen ut pensio vitam beneficiati non praetergrediatur* et canonicus ac pensionarius pro unica vice persolvere debeant Ordinario sextam redituum partem* in pauperes erogandam* facto verbo cum SSmo.

[*Latin ed. p. 112*]

CANONICAL POINTS FROM WHICH ONE MAY GATHER: I. Simony, as discussed in the title, is considered a secret offense; because the benefice conferred was given with a certain understanding and obligation that a portion of the fruits of that same benefice would be paid by the recipient to another (1). II. This kind of secret simony, besides the penalties already in force according to common law, is, according to the most recent Apostolic Constitution, § IX, subject to excommunication, reserved to the Holy Pontiff. III. Those who appear to be immune from the stain of simony and from ecclesiastical penalties; and those who, having been unaware of a simoniacal agreement initiated by others, and for whom it is certain by law that no one should be punished without fault. (1) Those who have acquired a benefice through simony, as well as any other benefice or pension, even one previously obtained canonically, are deprived of it, and incur the penalty of being prohibited from obtaining the same benefice, and any other benefice whatsoever; probably not before a sentence, at least a declaratory sentence of guilt. Furthermore, the conferral of a benefice through secret simony is reserved solely to the Holy Pontiff, and the fruits improperly received are applied to the Apostolic Camera. And according to Chapter 33 of the Ordo concerning Simony, those of whom we are speaking should have relinquished the benefice and pension, since they recognized that simony had been practiced by others. Indeed, it is written in the aforementioned passage: "According to the institutions of the sacred canons, even the smallest children, who are led to the Churches by their parents through money, are held to relinquish them." However, these individuals preferred to appeal to the Apostolic See, in order to obtain a remission regarding the past, and the faculty of retaining the benefice and receiving the pension in the future. And their requests were granted, through the

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benevolence of the Most Holy Father.

[*Latin ed. p. 113*]

113 CONCURSUS. December 20, 1879. SUMMARY OF FACTS. The parish and archpriestal church dedicated to Saint Juliana, virgin and martyr, in the Diocese of A., remained without a pastor since October 19, 1877. The Ordinary, to whom it belonged to confer such a benefice, after four months from the date of the vacancy, requested from the Apostolic See a dispensation from holding a concursus. This request was denied, and the Bishop was warned to proceed with the concursus. In order to provide a new pastor for that parish for the good of souls, the Bishop, by edictal letters dated July 7, 1878, announced the concursus; and on the 15th day of the same month, he extended the term of the convocation (1). The following candidates presented their names: Fathers Anthony Iannucci, Anthony Iannotta, Alphonsus Iannucci, Paschal Mauro, Anthony Renzi, Angel della Ratta, and Alphonsus Calandra; all of whom appeared on July 25, 1878, before three examiners to undergo examination. After reviewing the answers of the candidates, and considering the testimonies and the proven probity of their character, only those who were deemed suitable in terms of doctrinal merit were approved (2), as appears from the records; of these, five were approved and renounced, while the last two were rejected. Then, the Bishop elected Father Anthony Iannucci, who had received the highest number of votes, as the new Archpriest, and conferred the institution upon him.

(1) Such a delay does not merit the penalty of nullity. For if the Tridentinum sets a term of ten days, it does not precisely assign this term, but leaves it to the discretion of the Bishop. It can be longer, provided it does not exceed twenty days, observing the form of the Constitution of St. Pius V, according to GarActa, Vol. XIII, page CXLVII, lines de Benef. 1, paragraph 9, and chapter 2, numbers 50 and 51.

(2) See the appendix on page 119, in which we consider whether the reasoning for rendering judgment in this manner is contrary to the doctrine of rendering a cumulative judgment, both with regard to the knowledge and the requirements of the candidates.

[*Latin ed. p. 114*]

114 He had understood the situation, and that, due to his negligence, the matter had been referred to the Apostolic See, because a month had passed since the vacation, he obtained, through the favor of those elected by the Dataria, Apostolic Bulls, which were truly granted on the fourth day before the Kalends of October, 1878; and the region, as they say, pleased, was demanded for execution, not without some clamor and scandal on the part of the Reverend Calandra. For, bearing a bitter spirit towards his condemnation, and within the limits of the law, he appealed to the Metropolitan

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Curia from the unfavorable report of the examiners. This first pronounced that there was no concurrence to be declared, since the presentation for the collation of the parish had taken place beyond the prescribed time by the Bishop; however, after considering that the collation of the parish had subsequently been made by the Apostolic Dataria, he declared himself incompetent to judge in the present controversy. Therefore, on January 27th, the Reverend Calandra petitioned the Sacred Congregation of the Council to declare that concurrence null and void, so that, after a new examination of the matter, the parish might be granted to the more suitable Reverend Calandra, and so that the Apostolic Bulls might be declared null, because of fraud and deceit. The Bishop, as is customary, being asked for information, did everything in his power to demonstrate that the aforementioned Apostolic Bull was entirely free from any flaw of fraud or deceit. Afterwards, the Most Reverend Prelate cleared the pro-synodal examiners from the stain of simony, with which the Reverend Calandra was unjustly accused by the public, and declared the cause of the disturbances and scandal, so that, out of a sense of duty, he should have suspended him from hearing confessions.

Synodal Dispute. The Council of Trent, Session 24, chapter 18, decrees that pro-synodal examiners must bring to bear in the collation of a parish benefice a cumulative judgment of knowledge and requirements. Indeed, thus is the mandate of the Fathers of Trent: "After the examination has been completed, those who have been judged suitable by them are declared to be so, in terms of age, morals, doctrine, prudence, and other things suitable for governing the vacant church."

RIGHTS OF THE REVEREND CALANDRA.

[*Latin ed. p. 115*]

Concerning that doctrine regarding the cumulative and conjoint judgment to be rendered, concerning the doctrine and requirements of those participating, it is more clearly explained and confirmed by Benedict XIV in *De Synod. Dioec.*, book 4, chapter 8, number 3: "Examiners ought not only to test their knowledge, but also, above all, to inquire into the principal reasons for their probity of morals, prudence, age, and other qualities by which it is necessary that one be endowed who is entrusted with the care of souls." To this, the Constitution of the same Pontiff adds, beginning with "Cum illud," § 16: "Let the Examiners employ equal, or perhaps greater, diligence in examining other qualities suitable for the care of souls: let them inquire into the honesty of morals, gravity, prudence, the services rendered to the Church thus far, the praise acquired in other offices, and other ornaments of outstanding virtues, all of which must be joined together; and having considered all these things conjointly, they shall reject the unsuitable

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by their suffrage, and shall report the suitable to the Bishop." Now, if the Council of Trent and Benedict XIV have established a formal cumulative and conjoint judgment concerning knowledge and requirements, then, if this form is disregarded, the very process of selection must necessarily be corrupted. Let Reclusius be heard on the subject of Concursus, page 4, title 5, number 46 and following: "It will be a bad report from the Examiners whenever, within the limits of doctrine, they have not proceeded, but have not at all investigated morals and other qualities suitable for the care of souls; and Benedict XIV states that such a bad report from the Examiners, because the prescribed order and form have not been observed, brings about an incurable nullity of the selection, according to the cited authorities." To this doctrine, the Sacred Congregation consistently adheres, as is evident in the case of *Montis Regalis*, of August 2, 1607, reported by Fagnano in *Cap. Eam te de act. et qualit. praef.*, number 15: "If the Examiners have not reported that the candidates are suitable in all respects, as the Council requires, there is no selection." These are consistent with the resolutions in *Beneventana* on January 26, 1878, and in *Viterbo* on May 4 of the same year.

(1) (1) You have these questions related in Volume XI, pages 117 and 125.

[*Latin ed. p. 116*]

116. CONCURSUS. Since, in the Concursus, of which we are speaking, no consideration was given by the examiners to the merits of the Reverend Angelus della Ratta and the petitioner Calandra, as appears from the records, a manifest nullity would seem to have arisen; therefore, a new Concursus should be ordered. However, the Reverend Iannucci is forbidden from participating in the Concursus, due to the stain of simony. This nullity cannot be said to be healed by the decree issued by the Dataria, favoring Iannucci, and furthermore, nothing concerning the healing of nullities is found in this section. Moreover, if one were to contend, even with this form disregarded, that the Concursus could be maintained, the parochial provision made in favor of Iannucci does not seem to be able to be upheld, since it is infected with the stain of simony. Indeed, it is certain by law that the collation of benefices made through simony are void and null. This applies whether simony is perfected on both sides, or whether it is supported by a contract, whether the elected one himself has given, or promised, money, or whether his friends and relatives, unaware of this, have given or promised money. Canon 5, cause I, question 4, Extravagant 2, concerning Simon, among the common decrees, chapter 27, concerning Simony, and the common decrees. In truth, the matter of simony intervened between the Reverend Iannucci and the examiners, as the petitioner recounts, and he strives to demonstrate with several testimonies, arguing that the provision made in favor of Iannucci

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is null. Furthermore, he recounts how the provision made, in violation of the Apostolic Bull, cannot be upheld, because it is tainted with the vice of fraud and deceit. Therefore, if a valid Concursus were to be declared, the provision made would have to be invalidated, and for this reason, the petitioner maintained that the parish should be assigned to him. Indeed, if the requirements of doctrine are joined together, if all are expounded together according to the terms of the Benedictine Constitution, the Reverend Calandra would certainly be numbered among the approved. For he has publicly taught for many years in the diocesan seminary, and has fulfilled the duties of confessor, catechist, and preacher. Therefore, having been approved, and since it is within the power of the Bishop to choose, among the approved, the one whom he judges to be more suitable in the Lord, it is undoubtedly the case that he would have been elected, and therefore, the parish should be assigned to him at this time. Furthermore, the Bishop,

[*Latin ed. p. 117*]

Regarding the competition, number 17, he was preferred to all others in the parish, due to the declarations of esteem and benevolence that he had shown towards them, up to the day on which he was rejected by the pro-synodal examiners. IURA IANNUCCI. On the other hand, the conduct of the examiners did not seem to be blameworthy in this case, contrary to the law of Trent. For this law requires that the examiners inquire about the age, morals, doctrine, and prudence of the candidates; but in the absence of knowledge, it seems useless to consider other merits; and if a candidate is already deemed unsuitable due to a single defect, it is not necessary to further investigate. It is also known from the sacred canons that the ignorant and uneducated should be prevented from holding a parish office; therefore, it would seem that the law places the burden on the examiners to inquire only about merits when the candidates have reached a certain level of knowledge and have faced a real danger. Thus, in the competition in Anagnina (1) on July 20, 1872, because the examiners had not considered the merits of the priest Pace, who had been rejected due to a lack of knowledge, the question was raised: "Whether the competition for the parish of St. Pancratius is valid in this case." The answer was negative. This resolution was confirmed in the meetings of December 14 of the same year, with a clause and further considerations. Therefore, if there is no doubt about the validity of the competition, it seems useless to investigate the provision of the parish church to the person of Father Iannucci, who, with regard to knowledge and qualifications, appears to be more worthy than his competitor. This seems to be the case whether one examines the records of the competition or considers the judgment issued by the examiners and the appointed consultant (2). And what is more, he was recommended by the Bishop and by the Apostolic Datary, from

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which he obtained an Apostolic Bull, which was already being demanded for execution. The accusation of simony against the examiners should be disregarded; because the witnesses are only based on hearsay, and their testimonies, written down, are not supported by any mark of authenticity. (1) You will find this question discussed in Volume VII, page 340 of the annals. (2) Read Appendix III, page 119. In it, following the footsteps of the learned consultant, we have tried to suggest something about the validity of the competition, even if the benefice has been transferred to the Holy See; about the judgment issued by the examiners, about the ineffectiveness of the election and the collation made by the Bishop, and about the Apostolic Bull of the Datary.

[*Latin ed. p. 118*]

118 CONCURSUS: And because the Prelate testifies that a good testimony is given concerning the moral character of those examined, and that the alleged simony was published by the accuser Calandra. Furthermore, less attention should be given to what was reported concerning the vice of deception and trickery; because in his petition, neither was mention made of a legal dispute pending before the Metropolitan Court, nor of the right of devolution to the Apostolic See. For the very words of the Bull demonstrate the contrary, because the same Bull makes mention both of a legal dispute pending, and of the right of devolution to the Holy See, and this applies to all. Having briefly explained these matters, the following questions were proposed for discussion. I. Whether the nullity of the concursus can be established. II. Whether the provision for the Priest Anthony Iannucci is maintained in this case. And, in both cases, the answer is negative. III. Whether and to whom the parish church should be assigned in this case. RESOLUTION. The Sacred Congregation, after discussion on December 20, 1879, decided that the following should be answered: To the first question: No. (1) To the second question: Yes. To the third question: According to the provisions stated above. Furthermore, the Priest Calandra shall perform ten days of spiritual exercises as penance for the calumny. (1) We abstain from the usual deductions; because those deductions which are presented to us appear equal to those which are found in Vol. XI, page 131; as can be seen from what we will say in the next appendix.

[*Latin ed. p. 119*]

APPENDIX III. In which certain difficulties arising from the preceding question concerning examinations are discussed. We mentioned in Volume XI, page 131, that examiners should conduct a cumulative assessment of the candidates, both with regard to doctrine and with regard to their qualifications. Thus, as we stated, citing Trident, Session 24, chapter 18, concerning Benedict XIV, from the Decrees of the Diocesan Synod, book 4, chapter 8, number B, and the Relection on examinations, page 1, title 6, number 16

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and following, we considered an examination to be vitiated by nullity if this form of inquiry is disregarded. For if the theory defended by some, concerning the rendering of a disjunctive judgment, both with regard to knowledge and with regard to the merits of the candidates, were to be legally established, it could not be condemned as unreasonable; but if it were legally established, it would have to be rejected, since it is contrary to the Tridentine decree, as explained by Benedict XIV in the aforementioned passage. This doctrine may perhaps seem contrary to the present resolution of the Sacred Congregation, as related on page 113; for in that matter, the examiners condemned two competing priests, d. Calandra and d. De la Ratta, before knowing about their qualifications. However, it seems to us that no harm has been done to the doctrine by this resolution. For the examiners, when inquiring about the knowledge of the candidates, found that d. Calandra had obtained seven bad points and seven good points; d. De la Ratta, on the other hand, had obtained six good points and eleven bad points. Therefore, it was impossible for the examiners to associate, in a close connection, the points of knowledge, which were completely lacking, with the points of qualifications concerning the aforementioned priests, since these priests were found to be completely ignorant, and their lack of knowledge was added to the points of merit. Therefore, in the case we are discussing, it cannot be said, it seems to us, that a disjunctive judgment was carried out with regard to the knowledge and the merits of the candidates: but rather, it could not have been a conjoined judgment, or an addition of a negative quantity of knowledge with a positive quantity of merit. But even if this resolution were contrary to the doctrine we have discussed, what then? Would it be said that the Sacred Congregation has rejected a doctrine supported by countless resolutions, as can be seen in the treasury? May it be far from us to think that the Most Holy Fathers, through one or the other resolution, which, although not contrary in words, might have been based on circumstances, have intended to reject a practice that is highly consonant with the Tridentine decree. Would it not be better to say that the abnormality of one resolution, among many others of the same kind, sometimes...

[*Latin ed. p. 120*]

120 APPEN! Does the origin lie in the circumstances of persons, places, and times, which are known only to the judges, and which prudence or charity suggest should not be made public? Now we must proceed to other matters. The parish of which we are speaking remained without a pastor on October 19, 1877, but the meeting took place on July 25, 1878. Therefore, the Bishop, after nine months from the date of the vacancy, convened a meeting for the collation of this benefice; and thus, the benefice was undoubtedly devolved to the Holy See. For, in his Constitution *In conferendis*, St. Pius V decreed that a curatial benefice should be devolved to the

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Holy See, unless the Bishop conferred it within six months. "Moreover, lest parochial churches remain for a long time in a state of suspension, to the great detriment of souls... concerning which churches parochial, of which, for the time being, Bishops and any other Ordinaries are the collators... the provision and collation pertains and belongs to them... unless these same Bishops and Ordinaries, within the aforementioned six-month period from the date of their vacancy, having made a perfect examination according to the form of the Council of Trent, have not provided for the collation, provision, institution, and in every way the dispensation. To Us and to the Holy See We reserve." (1). However, if this church was devolved to the Holy See due to the Bishop's negligence, one might question whether the Bishop validly convened the meeting. Whatever others may think, it seems that it can be asserted that the meeting was validly convened by the Bishop. Indeed, according to the Pontifical Constitutions concerning reservations, those matters which are done prior to the reservation are not reserved to the Apostolic See, but rather, due to the penalty of negligence, the very collation of the benefice is devolved to the pontifical authority. Furthermore, according to the Constitution of Benedict XIV, which states: "Since it often happens that parochial churches, canonical offices, and other benefices pertaining to the care of souls are to be conferred by the Apostolic See, either because they have become vacant during the reserved months, or because they have been reserved to the Holy See for another reason, We, following in the footsteps of Our predecessors, decree and order that..." (1). Alexander III, in the Third Lateran Council, introduced this kind of devolution in chapter 2 concerning concessions, where it is written: "But when ecclesiastical benefices, or offices and functions in any church, should happen to become vacant, let them not remain long in suspense, but let them be conferred within six months upon those who are able to administer them worthily. If, however, the Bishop, when it pertains to him, has neglected this, let it be ordered by the chapter. And if it pertains to the chapter, and this has not been accomplished within the aforementioned term, let the Bishop, according to God, carry this out with the counsel of religious men. Or, if all have neglected it, let the Metropolitan dispose of these matters according to God."

[*Latin ed. p. 121*]

121. With the exception of cases reserved to the Holy See, according to the aforementioned Constitution, the Bishop may order a competition: why, then, would this not be permissible in the case of devolution due to the Bishop's negligence? Benedict XIV, in the Synodical Constitution, explains his intention when he says: "But concerning all other benefices, which are administered under any other title, except those for which provision has been made by monthly payment to the Holy See, a competition shall be sent to the Data Office." From these words, we understand that, in one case or

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another, the competition is ordered by the Bishop without any distinction, and that no permission or license is required for this action, which the Bishops should understand from these letters.

However, it is understood that the most learned Pontiff, by using the words "in one case or another," intended to speak of all cases of reservation, and therefore, also of the case of devolution. For devolution is a kind of reservation, and indeed, Pope Pius V, in the aforementioned Constitution, refers the case of devolution due to the negligence of Bishops to the head of reservations, as can be seen from the very words themselves. Furthermore, nothing better demonstrates the intention of the legislator than the reason for the law; which certainly indicates that the legislator intended to include all cases. And indeed, what was the reason for the law of Pope Pius V and the law of Benedict XIV? The same reason, and the same goal, motivated both Popes; who, through these constitutions, intended nothing other than to ensure that vacant benefices were filled as quickly as possible by Bishops, and that a more suitable candidate be appointed. For only the Bishop, who knows his flock, can, through a competition, present a more suitable candidate, who is indeed superior to others in both knowledge and moral excellence. Moreover, in all competitions... and under any other title, all exceptions are rejected; therefore, it is also understood to include cases reserved by the law of devolution. The reservation of a benefice, by the law of devolution, is identical to the benefice in question (1), therefore, what is said about any reservation of a benefice concerning the ordering of a competition, must also be said about the reservation of the same benefice by the law of devolution, because they are equivalent in this respect, and therefore, what the Benedictine law decreed about one, it decreed about the other. Therefore, if, even in the case of devolution of a benefice to the Holy See, the Bishops are given the faculty of ordering a competition, then the Bishop, concerning whom this matter is, must order it. But what should be done if the Bishop persists in his negligence!? By order of the Supreme Pontiff, the competition must be ordered by the Bishop himself.

(1) Some distinguish between reserved and affected benefices. A reserved benefice is one in which the Bishop is perpetually deprived of the power to confer it. An affected benefice is one in which the Bishop cannot confer it, except for that one instance in which it is conferred by the Pope.

[*Latin ed. p. 122*]

122 APPENDIX spontaneously completed according to the norm of the Council of Trent, Session 24, which the Apostolic See would otherwise be compelled to carry out. We have already seen that, even if a parish benefice has devolved to the Apostolic See, the Bishop validly convoked a competition. Now, it must be determined whether the completed competition possesses validity, and whether the judges have observed the rights of devolution to the Holy See, when rendering judgment. It seems easily

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demonstrable that the completed competition, of which we are speaking, is valid; because the act of convoking the competition is fulfilled by the completed examination. Benedict XIV, by Constitution, not only grants to Bishops the faculty of convoking a competition, but also of conducting the examination itself. He commanded the Bishops: "That whenever benefices reserved to the Holy See, to which the care of souls is attached, become vacant, and with which a suitable faculty has been directly conferred upon them by us, they should not fail to convoke a competition; and if it concerns benefices reserved by reason of the tithe* to which the vacancy pertains, such acts of the competition should not be transmitted to the Apostolic Datary, but nevertheless they should not fail to indicate whom they consider most suitable in the Lord; but in all other benefices, the care of which is derived from any other title, except by reason of the tithe reserved to the Holy See, the acts of the competition should be sent to the Datary." From this, it is clear that the faculty was given to the Bishops to complete the examination. And therefore, as we stated above in section 1, if the Bishops, in the case of devolution due to the negligence of the Bishops, possess the faculty of convoking a competition, they can also, in the case of devolution, hold a competition and examine the candidates. If the acts of the competition are to be transmitted to the Datary, as ordered by Benedict XIV, then they must demand an examination from the candidates; otherwise, what acts of the competition would they send to the Holy See? It is clear that the norm for the competition has been followed, as established by the Council of Trent and by the Roman Pontiffs. For the Council of Trent, Session 24, chapter 18, provides as follows regarding the examination: "After the appointed time has passed, all those who have been described shall be examined by the Bishop, or, if he is hindered, by his vicargeneral, and by other examiners, not fewer than three, whose votes, if they are equal or singular, may be joined by the Bishop or the vicargeneral, to whom it seems best. The examiners shall be proposed by the Bishop or his vicargeneral to at least six persons in each diocesan synod, who shall satisfy the synod, and be approved by it. And when a vacancy of any kind occurs in the Church, the Bishop shall choose three of these, who shall complete the examination with him... and all shall swear, before God, to perform their duties faithfully, setting aside all human affections." And St. Pius V added: "After the appointed time has passed, all those who have professed shall be examined before the Bishop or..."

[*Latin ed. p. 123*]

He said to the Vicar: "In the Diocesan Synod, at least six examiners are presented to the Bishop or his Vicar, and to the chapter of the greater Church. Of these, three shall be examiners. They shall swear that they will examine, without regard for any human consideration." And Clement XI said: "All candidates shall be examined in the same manner. That is

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to say, the same questions, the same cases, and the same passages from the Gospels shall be presented to all candidates. At the same time, the same cases and the same questions shall be put to all. The same amount of time shall be given to all to answer the proposed cases. The candidates shall be enclosed in a chamber from which they cannot exit, and they shall be given the opportunity to write. All shall write with their own hand and sign their names. The answers shall be written in Latin, and the explanations in the vernacular." Benedict XIV confirmed this Constitution, referring to all that it contains in his Constitution *Cum Illud*, adding further: "On the day appointed by the Bishop, the examination shall be held, observing accurately in all respects the form set forth in the aforementioned Decrees of the year 1721 (namely, in the Constitution of Clement XI), and the entire series of events shall be carefully recorded in writing. Furthermore, the examiners, in order to obtain a certain and undoubted judgment of knowledge, after having diligently assessed the expertise of each candidate in the development and explanation of some chapter of ecclesiastical doctrine, whether from the Holy Fathers, or from the Holy Council of Trent, or from the Roman Catechism, and with equal diligence, shall weigh the answers given to the questions proposed." No one denies that this canonical norm has been followed by the Bishop and the Examiners. Now, coming to the second part of the proposition, we believe that the pro-Synodal examiners, in giving their judgment, have acted without the right of reservation. For it is established that, for reserved benefices, whether directly or by right of devolution, it is left to the Holy See to pronounce judgment on the examination completed; except in the case of a reservation relating to a month, in which case the provision pertains to the Holy Father, according to what has been cited several times in the Constitution *Cum Illud*. "If the examination is completed, and the matter concerns benefices that are reserved only for a certain number of months, the Bishop shall choose the most suitable of those approved and shall inform the Dataria; and the acts of the examination shall not be transmitted, unless by the Dataria, when it deems it opportune, they are requested. But if the said benefices, in which the care of souls is involved, are reserved for a period longer than the Apostolic months, to the Holy See, then, according to the ancient and unchanged practice, the Bishop shall abstain from giving his judgment, and shall present the acts of the examination to the Dataria; it shall be permissible for the Ordinaries, at their discretion, to inform the Dataria in writing, by means of a private letter, of the person whom they consider most suitable for the care of the church, and to recommend him."

[*Latin ed. p. 124*]

124 APPENDIX: Whether there might be some hidden or unmentioned reason that could hinder the granting of the benefice. Therefore, the exam-

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iners ought to abstain from rendering a judgment, and the Bishop ought to transmit the proceedings to the Apostolic Delegation. And therefore, the judgment given by the examiners, although just, was ineffective, and had no legal effect regarding the granting of the benefice. From this, it follows that the election and granting of the benefice by the Bishop were also null and void. Indeed, the Supreme Pontiff exercises the full power to grant all ecclesiastical benefices. See Cap. Licet de praeb, no. 6; and from him proceeds the division and origin of all benefices, according to Cap. ut Eccles, sing. caus. 13 qu. 1. And therefore, the Supreme Pontiff can grant all benefices pertaining to Ordinaries, either by right of prevention, or by reservation, or by devolution. The chapter that pertains to the right of devolution is relevant to our case. The Bishop granted the curacy after nine months, indeed, in the tenth month from the day of the vacancy, and he admitted the priest to possession, whom he considered more worthy; whereas, according to Cap. de suppl. negl. sancitum sit, it is stipulated that if the person to whom the granting of the benefice pertains grants it after the lapse of time during which the Lateran Council is in session, the granting is not valid. The reason is that after the time limit has passed, those who grant are deprived of the power to grant, which devolves to the superior. And for what is not given, it is as if it is given by one who is not legally able to give. Regarding curacies, Saint Pius V, in his Constitution concerning the granting of benefices, when he reserved the parish benefice that is vacant to the Holy See, if the Bishop does not provide for it within six months, adds: "We strictly forbid anyone, except the Holy Father, or those who have been granted such permission, as is the case here, with whatever authority they may be endowed in this matter, to dispose of such benefices as are thus reserved." Hence, according to the canons, the Bishop was able to call for a competition, but he was in no way able to elect, grant, and admit to possession; these acts are expressly prohibited by the aforementioned canons and by the Constitution of Saint Pius V. The Bishop was obligated to send the proceedings of the competition to the Delegation, as prescribed by the Constitution. Regarding benefices reserved under any title, except those that are vacant during the Apostolic months, the error of the Bishop, as he believed, does not excuse him. Error in law? We do not believe so: for the law in this matter clearly determines. Perhaps an error due to ignorance of the law? Not even that excuses him: for error due to ignorance of the law is identified with the very ignorance of the law, and such ignorance does not excuse. An error of fact? But from the proceedings it is clear that the Bishop was aware of the full period of the vacancy.

[*Latin ed. p. 125*]

"He had been in the service for twelve and a half years, and had not committed any error." The benefit conferred was obtained through deceit. Indeed, the Bishop was aware of his inability to confer that benefit, and,

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through his negligence in providing for the Metropolitan Curia, on the very day that a new parish priest was to be appointed, he declared that he would do so. But this action was annulled by the delegation from the Holy See; for the Holy See did not directly obtain it, nor did it grant the right to confer it to negligent Bishops; because he, acting as the delegate of the Holy See, provided [for the appointment], which in the case of devolution is never permitted by law.

Having stated these things, we say that the Bulla, granted through the Datary, was valid and effective. For in this case, Leo XIII used the power which he had assumed, namely the power of devolution, in order to punish the Bishop's negligence. It is not permissible to object that the priest commended to the Bishop obtained the benefit; for in the cited Constitution, after Benedict XIV decreed that Bishops should abstain from rendering a more important judgment, but that the acts of the competition should be presented, he adds: "It will be permissible for the ordinaries, through familiar letters written to the Datary, to notify the person whom they consider most suitable for the care of the church, and to remind them whether there is any hidden reason, or any circumstance that might hinder him."

Therefore, it seems that the Bulla of confirmation can be called a corrective measure; in as much as it restores everything to its proper state, that is, by restoring the case to the condition in which it was before the competition was completed, and the Pope, by healing and confirming the election made by the Bishop, does not do so by his own authority, but by the power of devolution.

[*Latin ed. p. 126*]

126 DECREE (1) Whereas, OUR MOST HOLY FATHER LEO XIII declares and establishes that marriage, which they call civil, does not produce an impediment to the honor of public justice. After lay legislators, with impious audacity, have presumed to invade and regulate the matrimonial bond, which was first instituted by God, the Author of Nature, before the existence of any civil society, and which was subsequently elevated to an unspeakable dignity by Christ the Redeemer, exceeding entirely any political and civil jurisdiction, many Bishops and other pastors of souls have anxiously requested from the Apostolic See whether an act arising from civil law, which usurps the honorable name of marriage, produces an impediment to the honor of public justice. Since these requests have been repeated in recent times, the Supreme Pontiff ordered that this matter be diligently examined by the Sacred Congregation of Bishops and Regular Canons of the Holy Roman Church, and by the Cardinals of the Council of Trent. The Sacred Congregation, after consultations with distinguished men skilled in theological and canonical disciplines, and after mature discussion in a general meeting on March 13, 1879, regarding the proposed formula of doubt – Whether the act commonly called civil marriage produces an im-

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pediment to the honor of public justice – responded: Negatively; and it is to be consulted whether the Most Holy Father would deign to declare and establish this. Therefore, OUR MOST HOLY LORD, Pope Leo XIII, having heard the entire account of the matter, in an audience on the 17th day of the same month, granting the petition of the Sacred Congregation, by the present decree declares and establishes that the aforementioned act, which is commonly called civil marriage, in places where the decree of the Council of Trent, Session XXIV, chapter 31, concerning the reform of marriage, or the faithful explanation of the matrimonial act, has been promulgated, should be understood to mean that those who intend to perform the act, (after having duly celebrated the ecclesiastical marriage, or with the intention of celebrating it as soon as possible), should perform only a civil ceremony; or that those who intend to enter into marriage in the future, or finally, those who, through ignorance or in contempt of ecclesiastical laws, intend to contract marriage presently, do not produce an impediment to the honor of public justice. And so, etc. (1) For reasons foreign to us, the publication of the decree concerning the question of civil marriage, which we have already discussed, was delayed. See Vol. XII, page 147, of the aforementioned work.

[*Latin ed. p. 127*]

127 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF THE VENERABLE CONFRATERNITY OF THE MOST HOLY STIGMATA: CONCERNING THE INTERPRETATION OF STATUTES AND THE VALIDITY OF CONGREGATIONS. On June 13th and September 5th, 1879. A SUMMARY OF THE FACTS. The statute of the Archiconfraternity of the Most Holy Stigmata in Rome, approved by Clement X in chapter 5, decrees that, after the names of all the brothers have been listed, sixty of them shall be chosen by lot. These sixty brothers, together with the Primicerius and the Guardians, elect the senior officials. The Confraternity of the aforementioned Archiconfraternity, having been joined to it for a long time, had previously been accustomed to draw by lot a third of the present brothers, who never reached sixty, and to these, as mentioned above, the election of the senior officials was entrusted. On January 13th, 1878, in the presence of five Guardians, but in the absence of the Primicerius, in a general assembly, this custom was abolished. And, with no one objecting, and with all giving their consent, it was decided that all the brothers present, as long as their number was less than sixty, could elect the senior officials. And, according to the newly established norm, which seemed more in accordance with the statutes, the senior officials were elected in that assembly. However, a few days later, one of the brothers appealed to the Ecclesiastical Court, with the intention of invalidating the elections, which had already been completed, by setting aside the old custom, and in the absence, in the general assembly, of the

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ecclesiastical Ordinary and the Primicerius.

[*Latin ed. p. 128*]

The General Vicar of the Venerable Brotherhood received the appeal and ordered a secret meeting to be held on February 10th, to which he himself attended. Although some protested, claiming that the presence of ecclesiastical authority was contrary to the statutes, the resolutions of January 13th were declared invalid by a decree of the General Vicar. Then, at the order of the same Vicar, a secret meeting was called for March 20th, which he himself presided over, despite the same protests. On the 24th of that month, a drawing of lots was held among one-third of those present; from this one-third, the senior officials were elected; but they were entirely different from those who had been elected on January 13th. The matter was reported to the Sacred Congregation of Bishops and Regular Canons, along with three questions raised below. The Ordinary considered that the custom could be maintained, as it had existed for a long time, because it had not caused any inconvenience; although the confreres, in initiating this practice, had misinterpreted the statutes approved by Clement X.

CONCERNING WHAT IS OPPOSED TO THE ANCIENT CUSTOM.

It was observed that the drawing of lots among one-third of the confreres present was entirely contrary to the statutes. For these statutes reject any interpretation that would allow for a drawing of lots, explicitly stating that the drawing should be carried out among sixty confreres, a number that exceeds the number present. This was wisely established to eliminate any confusion that might arise from the excessive number of voters from Ferento. However, the law sought to avoid the opposite inconvenience, namely, that the law, due to the small number of voters, might result in resolutions lacking force and proper authority. Therefore, the same law ordered that more important matters should be discussed by the General Congregation, so that a more prudent decision could be made with a larger number of voters, and thus greater force and authority would be achieved. However, in the V. Brotherhood, the number of confreres is often small; therefore, if a drawing of lots among one-third is made, the spirit of the law is completely disregarded. Hence, the resolution of the Con-

[*Latin ed. p. 129*]

TO THE VENERABLE CONGREGATION, the General Congregation on the 13th of January, 1878, it seemed opportune and in accordance with the law, and since, while restoring the observance of the statutes, it eliminates a contrary custom. The Ordinary himself, who in his information stated that this custom, although contrary to the statutes, should be maintained, because everything had proceeded quietly thus far, did not exclude the possibility of some future inconvenience. He stated that, on occasion, more

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than a third of the present members might be absent, hindering the fulfillment of the important business of the election of the higher officials. It could indeed happen that resolutions would be taken by a smaller number in the General Congregation than in the Secret Congregation, which would be absurd. Furthermore, the reason for excluding a third of the members is so fundamentally opposed to the statutes that no custom whatsoever can be admitted. And in truth, according to St. Luke in *De Regul.*, Discourse 68, number 5, no custom should be observed when the law is so clear that it admits of no observance, whether in an interpretative, presumptive, or prescriptive sense; for "where there is no ambiguity in the words, no interpretation of the will, nor of anything else, should be admitted, which is not given in clear matters." The statutes in question do not admit of interpretation, because they expressly and clearly order that sixty brothers be drawn by lot, and only when the brothers are present in that number; but they say nothing about drawing a third of those same brothers. And even if this custom were to be admitted as legitimately unusual, since it is revoked by those very ones who had introduced it, no one should doubt the legality of this revocation.

THINGS THAT FAVOR THE CUSTOM.

However, it must not be overlooked that this custom has in its favor both a period of one hundred and fifty years, and the judgment of the Ordinary, who considered that it could be maintained. For, as St. Augustine himself says in *Ad Januari*, Book 4, Chapter 5, "even the change of custom, which is helpful, disturbs by its novelty. Therefore, that which is not useful is, through fruitless disturbance, harmful." Indeed, a custom of this kind is so long-standing that it can even override the statute itself. "Centenaria" is a better title in this world, through which all things are governed.

[*Latin ed. p. 130*]

130 REGARDING THE VENERABLE CONFRATERNITY: "Everything changes," as De Luca states in *De Canonico Discipulo*, Book 2, chapter 6. The Rota, before Molines, on December 26th, and before Martinez in Praenestina, on March 23rd, 1818, number 3, declared: "He who uses a centennial possession, is certainly, by whatever better and more powerful title, and by law, supported; whether by pact, or by privilege, all these things, and if you desire anything else from the centennial possession, are to be preferred."

Regarding the second question, whether the presence of ecclesiastical authority is necessary in the Congregations of confraternities, it was noted that such intervention is contrary to the statutes of this confraternity, approved by Clement X. Indeed, although an ecclesiastic has always been present in the Congregations, he has never represented the jurisdiction of

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the Ordinary, but has been present as a Primicerius; a dignity to which he was elevated after prior aggregation among the confratres. Although it is said that the Ordinary was once ordered to have a General Vicar exercise the same jurisdiction over the Confraternity of the Holy Stigmata, and over others, this disposition was never actually put into practice, nor could it have legal force, because it is contrary to the statutes approved by the Holy Father.

However, it is stated by canonists that the Bishop can be present at the Congregations of confraternities, either personally or through a delegated person, in order to maintain order, as stated in the Secret Consistory and Regulations in Ragusa, on April 1st, 1596: "The Ordinary or Bishop can intervene and assist the Congregations of confraternities, and in elections of officials, provided that he does not introduce innovations."

And the Secret Consistory of the Council in Senogallien, on June 4th, 1707, states: "Indeed, the Bishop can intervene and assist the Congregations of confratres, even if they are held in churches and oratories of regular canons, in which societies are established, without it being possible to exclude him; however, he should not give his vote."

And Monacelli, Volume 1, Title 6, Formula 11, number 18, teaches that the Ordinary cannot prevent confraternities and congregations from proceeding without a license, and without the presence of a delegate of the Bishop, under penalty of nullity. Furthermore, the Sacred Consistory of the Council in Asculana, on March 24th, 1725...

[*Latin ed. p. 131*]

The VENERABLE CONFRATERNITY posed the following question (131): "Is it permissible for the Brothers... to convene General and Particular Assemblies, and to proceed to the election of officials, and to propose and decide on other matters pertaining to the Confraternity, without the license and assistance of the Bishop, or of the Vicarius Foraneus, or of another person appointed by the Bishop?" The response was: "Affirmative."

Having stated these premises, three points must be clarified regarding Question I. First, is it necessary to draw by lot one-third of the Brothers? And second, whether the number of those present should not exceed sixty. Second, is the presence of ecclesiastical authority necessary in the Assembly of this Confraternity? Third, whether the resolutions of the secret and general Assembly of January 13th should be considered valid, and consequently, whether other resolutions initiated in subsequent Assemblies should be considered null and void.

RESOLUTION. The Sacred Congregation of Bishops and Regulars, on June 13, 1879, decided: "It is permissible for the current officials to remain in office until the end of the current year, provided that, after the aforemen-

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tioned year of 1879, a new general Assembly be held according to the following rules: if the number of members exceeds sixty, sixty members shall be chosen by lot to cast votes; if the number is less than sixty, those present shall have the right to vote. Regarding the intervention of ecclesiastical authority, the general rule shall be observed, namely, that the Ordinary has the right to intervene, but he is not permitted to cast a vote."

On September 13, 1879, the question was again discussed under the following query: "In what manner should one proceed with the resolution issued in the general Assembly on June 13, 1879?" The response was: "According to the decision: the officials elected in the Assembly of January 13, 1878, shall begin the exercise of their respective offices with the new year, and shall continue to perform them for three years, in accordance with the form of the statutes, and thereafter."

[*Latin ed. p. 132*]

132 FROM THE VENERABLE BROTHERHOOD: I. Ordinary authorities of places have the right to participate in the assemblies of confraternities, either personally or through a delegated person, in order to maintain order; however, according to the general rule, they are not permitted to cast a vote. II. Therefore, in the present case, the decision of the General Vicar, by which the assemblies were declared invalid on January 13, 1878, appears to have been arbitrary. III. Although, according to canonists, *centenaria* custom is a better title for establishing a rule, by which everything is prescribed and everything is changed, nevertheless, it is of no benefit if it lacks the necessary requirements. IV. Hence, no custom can prevail against laws, which are expressed in clear terms, and which do not admit of any observance, whether in interpretation, presumption, or prescription. V. Nor can any interpretation of will, or of any kind of observance, be admitted; which is not given in clear words, and where no ambiguity is found. VI. Therefore, a custom that is contrary to a clear law is, from the beginning, to be considered flawed, opposed to reason, and like an abuse, which cannot become established with the passage of time. VII. A custom that directly contradicts the statutes, which clearly command the drawing of lots among sixty brothers, and only when the number present exceeds this number, but not even a word is mentioned about the drawing of lots among one-third of the brothers present.

[*Latin ed. p. 133*]

133 FROM THE HOLY CONGREGATION FOR INDULGENCES IN ROMA, CONCERNING THE PRIVILEGED ALTAR, JUNE 14, 1880. DECREE. The General Procurator of the Trappists presented the following to the Holy Congregation presiding over Indulgences and Sacred Relics: In each Trappist monastery, there exists a privileged altar, in which Mass is celebrated daily for the deceased brethren, relatives, and benefactors.

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However, according to the decree of the same Holy Congregation of February 29, 1864 (1), the privilege of the altar cannot be applied to more than one deceased soul in the same Mass. Therefore, the question arises: what is the efficacy of the aforementioned privileged altar among the Trappists, and does the privilege become useless, since it is never applied to a specific soul? Since the examination of this matter was entrusted to the Reverend Consultors, they proposed the following three points:

I. In what sense should the response of the Holy Congregation for Indulgences of February 29, 1864, be understood, namely, that the privilege of the altar cannot be applied to more than one deceased soul in the same Mass: is this limitation only practical and factual, according to the intention of the grantor, following the custom of the Church due to the limitation of the concession, or is it also theoretical and absolute, due to a limitation of power?

II. Among the Trappists, in the Mass which is celebrated daily for many (namely, brethren, relatives, and benefactors), is the Indulgence of the altar limited to only one of them?

(1) You have this Decree in Vol. I, page 626, *ibid.* (referring to the same publication).

[*Latin ed. p. 134*]

134 CONCERNING THE PRIVILEGED ALTAR III. Whether the privilege is rendered useless by the fact that it is not customarily applied to one of those determined souls. In the general Congregation held in the Vatican Palace on June 14, 1880, the Most Reverend Fathers responded: To I, Not proposed. To II, Affirmative. To III, Negative. And a report on the foregoing was made to His Holiness Pope Leo XIII by the undersigned Secretary, in an audience held on June 19, 1880, and His Holiness benignly approved the resolution of the Sacred Congregation. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on June 19, 1880. [Signature] Aloisio Caro, Oreglia, by order of S. Stephano, Prefect. Pius Delicati, Secretary.

OPINION OF THE CONSULTOR (1). To 1. The general doubt concerning the efficacy of the privileged altar can be posed either theoretically, concerning the absolute possibility, or practically, concerning the actual fact. Theoretically, one can inquire whether, from the nature of the thing and the intrinsic necessity and limitation of the power of indulgencies, the privilege of the altar can be limited to one soul, so that it cannot be granted for several people in the same Mass. But this theoretical question has perhaps never been proposed to the Sacred Congregation, and therefore, the response to which the Orator appeals in the proposition of the doubt does not seem relevant to it. Therefore, concerning this theoretical question, I will inquire shortly what solution should be given. But if, as is customary, the question concerning the efficacy of the privileged altar is posed practically, that is,

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according to the intention of the grantor and the usage of the Church, the solution has already been given by the Sacred Congregation, denying that the indulgence of the privileged altar can be applied simultaneously to several people. Indeed, it cannot be applied to several people, not absolutely and intrinsically, that is, from the nature of the thing and the divine institution, but because, according to the intention of the grantor and the custom of the Church, the indulgence is granted only for one soul in each Mass. In this practical sense, and in this sense alone, it must be understood. (1) It seemed to us that this opinion was so wisely composed that it should be presented in its entirety to the reader.

[*Latin ed. p. 135*]

CONCERNING THE PRIVILEGED ALTAR: 135. I believe the cited response of the Holy Congregation to a practical question, given to the Bishop of Angers who inquired, "Whether the privilege of the altar can be applied to the souls of several deceased persons," on February 29, 1864, is: "No" (Acta Sanctae Sedis, vol. I, page 626). Indeed, even before this response, the question seemed to have been implicitly resolved, from another general response of the Holy Congregation of July 28, 1840, when, concerning a proposed doubt about the efficacy of the privileged altar, it declared that the Indulgence, according to the intention of the grantor, is efficacious for freeing the soul from the pains of Purgatory, if it please God. Thus, the Holy Congregation responded to Bishop S. Flori: "The Indulgence attached to the privileged altar, if the intention of the grantor and the use of the keys of power are considered, is to be understood as a plenary Indulgence, which immediately frees the soul from all the pains of Purgatory; but if the effect of its application is considered, it is to be understood as an Indulgence whose measure corresponds to the benevolent will and acceptance of Divine Mercy" (according to Prinzivalli, page 420). But I believe that even this general response is to be understood as a practical response to a practical doubt, namely, that if the intention of the grantor and the use of the keys of power are considered, the Indulgence of the altar is granted for one soul, not for several, in the same Mass. This is indeed the intention and practice of the Church, and the Congregation declares what the Church intends, and not what the limitation of the keys of power may be. Therefore, the question is resolved practically, but not theoretically and absolutely. Indeed, if the question is proposed theoretically, in a matter that depends on the intention of the grantor and on Divine acceptance, there seems to be no intrinsic reason, based on the divine institution of the keys of power, why the plenary Indulgence could not be attached to a single Mass for freeing several souls simultaneously, if it please God. Certainly, the Indulgence attached to the same act can, by itself, be valid simultaneously for several: indeed, we gather from St. Thomas, who in IV. Sent., dist. 45, ad 3, question 2, while treating of another matter, has statements that can also apply to the

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present question concerning the altar. For the Saint indicates "the custom of the Church, which makes it so that the Cross (the Crusade) is preached so that someone may have an Indulgence for himself, and for two, and for three, and sometimes..."

[*Latin ed. p. 136*]

136. Concerning the privileged altar, it is granted to ten souls, both living and deceased. And shortly thereafter, it is also asserted that a plenary indulgence can be granted for a single work to benefit many, if, for example, as he himself says, it is given in this form: "Whoever performs this or that action, he himself, and his father, or whoever is joined to him in Purgatory, shall receive the benefit of the Indulgence." Just as another work can be attached to the privileged altar, so too, I believe, a plenary indulgence can be attached to the same altar in a single Mass, benefiting many. Furthermore, it is certainly possible for a single Mass to merit a plenary indulgence for two souls, for two reasons. Indeed, to the question: "Can a priest who celebrates Mass, for example, for a deceased person, and applies a plenary indulgence from the privileged altar to him, on the same day, through the means of Holy Communion received after the Sacrifice, also merit another plenary indulgence, either for himself or applicable to the deceased, if Holy Communion is prescribed for obtaining this indulgence?" the Congregation responded on May 10, 1844: "Affirmatively." Now, if a double or triple plenary indulgence can be attached to the same Mass for different reasons, I do not see why, in theory, a double or triple indulgence cannot be attached for the very reason that the Mass is celebrated at a singularly privileged altar. Furthermore, I can also cite a similar example from another decree of the Holy Congregation (Acta s. Sedis, vol. VIII, page 487): "The Auxiliary Bishop, humbly prostrate before the Most Holy Divine Pontiff Pius IX, explained in the Apostolic Letters concerning the plenary Indulgence (Jubilee of 1875) that: 'We also grant that this Indulgence may be applied to the souls who, united with God in charity, have departed from this life, as a form of suffrage, and that it shall be valid; from which words, the following doubt arose: Can a faithful person, having fulfilled the necessary conditions for obtaining the Jubilee Indulgence, desire to apply it for the soul of a deceased person, and at the same time obtain the same Indulgence for himself?' His Holiness benignly declared in an Audience on April 25, 1875, that the Jubilee Indulgence can be obtained cumulatively for oneself and for the deceased." Now, why could not a similar thing be granted for the Indulgence attached to the privileged altar?

[*Latin ed. p. 137*]

CONCERNING THE PRIVILEGED ALTAR 137: It is efficacious in one and the same Mass for two or more souls in Purgatory, as Pius IX, by a singular exception, granted that one might obtain an indulgence through

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the same works of penance, both for oneself and for the soul of the deceased? And this singular exception of Pius IX, I readily present, because it was a benevolent exception from the general rule, according to which the Holy Congregation declared that one could not simultaneously obtain an indulgence for oneself and for the soul of the deceased. The matter was doubtful. "The Archpriest of Saint Mary, commonly called della Barricella, of the diocese of Bononiensis, obtained, through a Brief dated September 2, 1831, a plenary indulgence applicable also to the faithful departed, through a particle; and he asks whether, by virtue of this aforementioned particle, this indulgence is to be understood inclusively or exclusively, that is to say, either for the living alone, or for the deceased, or for both the living and the deceased at the same time?" The Holy Congregation responded: "When, in the granting of indulgences, these words are added - quam etiam - or similar words, so that it is understood that the same indulgences are also applicable to souls detained in Purgatory, they are to be understood exclusively, so that the Christian may, at his discretion, obtain the indulgence either for himself alone or for the deceased alone, and may be so efficacious." Thus, the Holy Congregation declared on January 15, 1839 (in Prinzivalli, page 405). Therefore, from this exceptional concession of Pius IX, it can be deduced that the general declaration of the Holy Congregation was to be understood only practically or de facto, according to the custom of the Church, and not theoretically regarding the very possibility thereof; and this can be confirmed by the response of the Holy Congregation on February 29, 1864, that the indulgence of the privileged altar cannot be applied simultaneously to several souls, but is to be understood practically and de facto, according to the intention of the grantor, according to the custom of the Church, and not also theoretically and absolutely, so that this indulgence cannot be granted for several. It might indeed be objected that, if this indulgence were not limited to one soul for oneself, an indiscriminate access to indulgences would be opened, and it could be granted that not only several, but all souls in Purgatory, could be freed simultaneously by one Mass through the indulgence of the privileged altar, according to the intention of the grantor.

[*Latin ed. p. 138*]

138 CONCERNING THE PRIVILEGED ALTAR. To dispel this difficulty, it suffices to note what St. Thomas states in the place cited above: "Nor does it follow that a Prelate of the Church can, at his own discretion, release souls from Purgatory, because for Indulgences to be efficacious, a suitable cause is required." According to this teaching of St. Thomas, which is common to the doctrine of the School, it can be said: Although there may not be a suitable cause, according to the order of Divine Justice, for granting an Indulgence so that all souls in Purgatory might, through a single Mass at a privileged altar, be released, as far as the granting party is concerned,

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it is certainly possible to have a suitable cause so that the Indulgence is not restricted to a single soul, but is extended to many, for example, in favor of a deserving member of a certain sodality, or for some particular merit, such as the founding or endowment of a church, benefiting many in common. As, for example, according to the judgment of Benedict XIII, there was a suitable cause for granting a daily privileged altar for the souls of the faithful who die in the hospital of the Brothers of the Order of St. John of God (according to Prinzivalli, page 40); why could there not be a suitable reason for granting that an Indulgence be attached to a single Mass, if it pleases God, for many who die on the same day in a church particularly privileged by the Church? As, according to the judgment of Benedict XIV, there was a suitable cause for granting that in the house of the Oblates of the Tower of Speculation, on the day of the death of any Oblate, all the altars of the house be privileged for that soul (1), why could there not be a suitable reason for granting that the same Indulgence would apply to each Mass for two or more, if several should happen to die there on the same day? I have indicated hypothetical examples, because, in fact, I cannot offer an example of this concession; but as, before the concession of Pius IX (according to the custom for at least several centuries), I do not find this concession in Prinzivalli, but there is inscribed in marble the following inscription: "Benedict XIV, Pope, granted to the altar under the invocation of the Annunciation of the Blessed Virgin Mary, a perpetual daily privilege for the souls of the Oblates and those living in this venerable house, as well as for their blood relatives in the first and second degree, and for Benefactors, and to each altar of the aforementioned house, a privilege on the days of the death and burial of any of the aforementioned Oblates, and for those having." From the Decree of the Holy Congregation of Indulgences, April 1742.

[*Latin ed. p. 139*]

CONCERNING THE PRIVILEGED ALTAR: No example, as far as I know, exists of an indulgence, both valid and cumulative, being granted to anyone who fulfills the conditions, and also for the soul of a deceased person; thus, the indulgence of the privileged altar could, in itself, be granted in the same Mass for two or more souls, although, as far as I know, there is no precedent for this, and therefore it can truly be said that this indulgence cannot generally be applied to more than one person, because it has never been granted for more than one. Some seem to believe that there is indeed a singular and absolute exception to the general rule in favor of souls on the Feast of All Souls, celebrated on November 2nd. This opinion is indeed mentioned in passing in the Angers question, but not in the response of February 29, 1864. But truly, the privilege of that day lies not in the fact that the indulgence can be applied in the same Mass for more, indeed for all, as if the intention of the Church in each Mass on that

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day were, so to speak, to empty Purgatory, as far as the granting authority is concerned; but rather, the privilege lies in the fact that all priests celebrating Mass on that day, in any altar, may, according to custom, enjoy the same indulgence as if they were celebrating at a privileged altar. In this sense only was the requested privilege granted; in this sense, the famous Consultor, Father Theodorus a Spiritu Sancto, proposed to the Holy Congregation, and it was granted by Clement XIII, who "graciously grants that the Mass celebrated on the aforementioned Feast of All Souls may enjoy the privilege as if it were celebrated at a privileged altar" (Decree of the City and the World, May 19, 1761, in Prinzivalli, page 294). Therefore, the general rule remains that, according to the intention of the grantor, the indulgence of the altar is always limited to one soul, either definitively, when it is granted only for a specific person, or indefinitely, when it is granted either generally for the deceased, or specifically for some group, association, family, etc., leaving it to the faithful to designate the specific soul for application, either individually or in a particular manner, or entirely to Divine Providence. But this is a limitation of the concession, not of the power; and therefore, the aforementioned declarations...

[*Latin ed. p. 140*]

Regarding the privileged altar, the Decrees of the Holy Congregation, dated February 29, 1864, and July 28, 1840, concerning the Indulgence granted to the altar for one soul, and not for more than one, appear to be understood only in a practical sense, due to the limitation imposed by the grantor in the exercise of the power of the keys, and not theoretically and absolutely due to a limitation of the power itself. Hence, the question: What is the efficacy of the privileged altar among the Trappists? The solution is now clear: but this is also evident of itself, even without a general investigation, from the words of the Indulgence granted in the Brief of Pope Pius IX (Sum. n. 3) of March 1, 1861, which reads as follows: "Whenever any priest of the aforementioned religious Congregation celebrates Mass for the soul of any Christian faithful who, being united with God in charity, has departed from this life, and celebrates it at any of the aforementioned major altars, the soul itself shall obtain, from the treasure of the Church, as a form of suffrage, an Indulgence, so that, through the merits of the same Our Lord Jesus Christ and of the Most Blessed Virgin Mary, ever Virgin, and of the Saints, it may be freed from the pains of Purgatory, if it shall please God." Therefore, the efficacy of the privileged altar among the Trappists is a plenary Indulgence for one soul, and indeed, generally, for any Christian faithful.

However, in each Trappist monastery, Mass is celebrated daily at such a privileged altar, especially for several deceased brothers, relatives, and benefactors. This is indeed well. The merit of the sacrifice will certainly be sufficient for all those together – the brothers, relatives, and benefactors

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– according to divine acceptance; but the added Indulgence is not valid for more than one; and although someone might perhaps, through error, believe that not only the sacrifice, but also the Indulgence of the privileged altar, can be applied simultaneously to several in the same Mass, it does not follow that more souls would obtain the Indulgence; because it does not depend on the intention of the celebrant, but on the intention of the grantor; and therefore, that Indulgence is not valid for more than one, not only, as is said in the proposition of the doubt, according to the decree of the Holy Congregation of Indulgences, dated February 29, 1864, but primarily from the very formula of the Indulgence in the Brief of Pope Pius IX: but on this point, there is scarcely any doubt; rather, the question is whether...

[*Latin ed. p. 141*]

CONCERNING THE PRIVILEGED ALTAR 141. It is asked whether even a single soul, whether from among the brethren, relatives, or benefactors for whom Mass is customarily celebrated at the privileged altar, can obtain an indulgence, even if no particular soul has been designated to whom the indulgence should be applied. Therefore, does the privilege become useless if it is never applied to a specific individual? I answer: No. The privilege does not become useless due to the lack of specification in an individual. For it is not a matter of an action performed by the priest concerning a specific object, as is the case, for example, with the consecration of a particular host from among many; rather, it is a matter of the offering of an indulgence, which depends on the intention of the one granting it and on divine acceptance. Therefore, it is sufficient that the celebrant intends to obtain an indulgence for the brethren, relatives, and benefactors, which he can obtain through the privileged altar, according to the intention of the grantor and according to divine acceptance; and thus, the privilege remains entirely useful, so that, according to the intention of the grantor and, if it pleases God, according to divine acceptance, at least some of the souls of the brethren, relatives, and benefactors may obtain the effect of the indulgence.

Furthermore, I have said sufficiently that this intention is sufficient: for in this case, there is not only an implied, but also an explicit intention of obtaining an indulgence, which is why the Mass is celebrated at the privileged altar for the brethren, relatives, and benefactors. Indeed, according to another response of the Congregation, no explicit intention is necessarily required, but an implied intention is sufficient, which is always presumed; and in this sense, understanding the response of the Holy Congregation to the question, "Whether a Mass celebrated at a privileged altar is, by itself, privileged, or whether it is necessary that either the one offering the alms, or the priest, intends to apply the privilege," (Latin version: "Whether a Mass recited at a privileged altar is, by itself, privileged; or whether it is necessary that either the one offering the alms, or the priest, intends to

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apply the privilege"), the Holy Congregation responded affirmatively to the first part, and negatively to the second, on March 12, 1855 (cited in Prinzivalli, page 563).

[*Latin ed. p. 142*]

142. CONCERNING THE PRIVILEGED ALTAR: From the foregoing, the following may be gathered:

I. The first question, concerning the theoretical aspect, may seem not to have been explicitly raised, since it rather pertains to the Most Holy Congregation of the Holy Roman Inquisition, to which cases relating to dogma are subject; while the Holy Congregation of Indulgences addresses the question of indulgences arising from the relics of the Saints or from indulgences themselves.

II. However, concerning the practical aspect, it appears to have been elucidated for a long time; for the constant practice of the Church has always been to attach an Indulgence to the privileged altar, to be gained by only one soul, united with God in charity, in that very same Mass.

III. Indeed, the first question, considered in practice, seems to have been elucidated by the resolution of the second question; for the Holy Congregation responded that the Indulgence is limited to only one person in each Mass, even among many brethren for whom Masses are customarily offered.

IV. Since the attainment of an Indulgence does not depend on the intention of the celebrant, but on the intention of the granting authority and on divine acceptance; therefore, even if the sacrifice is offered at the privileged altar for many in general, the Indulgence benefits only one of them, provided that such is the intention and limitation imposed by the authority of the keys.

V. It suffices for the celebrating priest to have the intention, according to the intention of the grantor, of gaining the Indulgence for brethren and benefactors, so that the soul, one of those for whom prayers are offered, and which is pleasing to God, may obtain the effect of the Indulgence.

VI. It also appears to be the case that, even if only one soul, united with God in charity, receives the benefit of the Indulgence, the merit of the sacrifice is nonetheless efficacious for all brethren, relatives, and benefactors, for whom sacrifices are customarily offered at the privileged altar.

VII. Therefore, it can also be seen that the privilege of the altar is not useless, neither concerning the Indulgence, nor concerning the merit of the sacrificial offering; for the Indulgence, at least for one soul pleasing to God, can be gained in each Mass, and the meritorious effect of the sacrifice can

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benefit all for whom the sacrifice is offered.

[*Latin ed. p. 143*]

143 APPENDIX IV. MANY MATTERS ARE REFERRED TO THE DECREES OF THE HOLY CONGREGATION OF RITES. OSCENSIS. The present Master of Ceremonies of the Cathedral Church of Oscensis humbly requested the Holy Congregation of Rites to resolve the following doubts:

DOUBT I. It is the practice in the aforementioned Cathedral Church that he who performs the office of Master of Ceremonies must also serve as the "Palmator" (bearer of the processional cross) in all offices. Since this is an impediment to him properly performing his duties as Master of Ceremonies, the question is asked: To whom does the duty of bearing the "Palmatoria" belong in solemn canonical Masses, where a privilege is present?

DOUBT II. There are also certain customs in the aforementioned Cathedral which are contrary to the rite of the universal Church, just as there are some things prescribed by the Church which do not prevail in the same Cathedral of Oscensis. The question is asked: What is the duty of the Master of Ceremonies in both cases?

DOUBT III. The Cathedral Church of Oscensis has two titulars, namely the Transfiguration of the Lord and the Nativity of Saint John the Baptist. The following questions are asked: 1. Can there be two titulars of a Church? 2. To the extent that the answer is affirmative, do both enjoy the privileges granted by the Rubrics?

Furthermore, the same Holy Congregation, after careful deliberation and consideration of the matters presented by the undersigned Secretary, decided to respond to the proposed doubts as follows: Regarding I. A decree shall be issued in Siena on August 3, 1839. Regarding II. A general decree regarding the doubts of September 17, 1822, shall be issued. Regarding III. To the first question, the answer is affirmative; to the second question, the answer is also affirmative, provided that both are equally principal. And thus it was written and it was ordered to be observed on April 14, 1877.

ASCULAN, IN PICENO. To the Most Reverend Father, Your Eminence, I, as a brother, present to this Holy Congregation of Rites that under my predecessor, permission to baptize at home was so easily obtained, that it was granted to the poor with only a doctor's attestation of some danger to the child in bringing it to the Church, while to the wealthy it was granted without any reason, but only out of honor. Now, since Your Eminence desires to hinder this practice, I fear that it may not be possible, both because of the established practice and because of the circumstances of the times.

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Therefore, in order to proceed more safely in this matter, I ask...

[*Latin ed. p. 144*]

144 The Sacred Congregation humbly requested the solution to the following doubts:

DOUBT I: If a physician testifies to some danger in bringing an infant of any condition to the Church, may the Bishop permit that it be baptized at home, with all the ceremonies?

DOUBT II: May baptism with all the ceremonies be administered at home to the children of persons who may be considered equal to Princes, even if they are infirm?

Furthermore, the same Sacred Congregation, having heard the opinion of the Reverend Father, Promoter of the Holy Office, and the Most Reverend Lord, Assessor of the Tribunal, deemed it necessary to indicate that it must, prudently and cautiously, remove the abuses that have occurred in this matter, and ensure that infants be brought to be baptized according to the prescriptions of the Church and common practice.

Rome, April 27, 1877.

To the Most Reverend Lord, Brother Bishop of Ascoli in Piceno.

From Benevento, and to the Most Reverend and Reverend Lord, Cardinals, Consort Brothers of the confraternity of the Most Holy Rosary, located in the place called Campolattaro, within the limits of the Archdiocese entrusted to Your Eminence, humbly requested that an altar of marble be erected in their own church, in the place where another altar already stood, but beneath which there were the remains of the deceased, which cannot be removed, as the Decrees prescribe, since the public authority does not permit the place to be cleansed, since there are buried there those who died from the disease called typhus, and the altar cannot be erected in another place; since the entire surface of the church is in the same condition.

The same Sacred Congregation, having heard the report of these requests made by the undersigned Secretary, decided to respond as follows: To the Ordinary, that he provide for the cleansing of at least the place necessary for the construction of the altar, according to the Decrees, namely, that the remains not only do not exist beneath the altar, but also that they are at least three cubits distant from its level or levels.

Rome, April 27, 1877.

To the Most Reverend and Reverend Lord, Cardinal Archbishop of Benevento.

[*Latin ed. p. 145*]

145 BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO XIII, POPE, AN ENCYCLICAL LETTER TO THE PATRIARCHS, PRIMATES, ARCHBISHOPS, AND BISHOPS THROUGHOUT THE

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CATHOLIC WORLD, GRANTING GRACE AND COMMUNION WITH THE APOSTOLIC SEE. TO THE VENERABLE BROTHERS: *To the Patriarchs, Primates, Archbishops, and Bishops throughout the Catholic World, greeting and communion with the Apostolic See. LEO XIII, POPE. Venerable Brothers, greetings and the Apostolic Blessing. The great office of propagating the Christian name, which was singularly entrusted to the blessed Peter, the Prince of the Apostles, and his Successors, has led the Roman Pontiffs to take care that sacred messengers of the Gospel should be sent to various peoples of the world at different times, as the merciful God seemed to require. Therefore, just as Augustine was sent to the Britons for the cultivation of souls, as was also Patricius to the Irish, Boniface to the Germans, Willibrord to the Frisians, the Dutch, the Belgians, and others were often sent to others; so also, to the people of Slawonien, the opportunity to fulfill the apostolic office was granted to CYRILLUS and METHODIUS, most holy men: through whose earnest efforts and labors it was accomplished that they might behold the light of the Gospel, and be led from a rustic life to human and civil culture. Cyrillus and Methodius, most noble of the Apostles, if all of Slawonien has never ceased to celebrate their memory, surely the Church of Rome has been accustomed to honor them with no less devotion, and both of them, as long as they lived, were...

[*Latin ed. p. 146*]

446. By an encyclical letter, He honored these things, and He did not wish to be without the ashes of another deceased. — From the year 1763, it was permitted to the Bohemians, Moravians, and Croats of the Slavic race, who were accustomed to celebrate annually on the ninth day of March the solemnities in honor of Cyril and Methodius, by the Indulgence of Pope Pius IX, of immortal memory, that they should henceforth celebrate the feast on the fifth day of July, and offer hourly prayers in memory of Cyril and Methodius. Not long afterward, when the great Council was held at Vatican, many Bishops, from this Apostolic See, earnestly requested that the cult and established solemnity of these saints be extended to the entire Church. However, considering the circumstances, and because of the changed state of affairs in those regions, it seems opportune to us to aid the people of Slawonien, concerning whose safety and well-being we are greatly concerned. Therefore, since we do not believe that anything is lacking in the paternal charity that we offer them, we wish to promote and increase the veneration of those most holy men, who, as formerly, brought the Slavic peoples, spread with the Catholic faith, from destruction to salvation, so that now they may powerfully defend them with heavenly patronage. In order that it may be more evident what sort of men we propose to the Catholic world for veneration and worship, it seems fitting to briefly touch upon the history of their deeds. Cyril and Methodius, brothers of the same mother, were born in the vast city of Thessalonica, and early went to

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Constantinople, in order there to learn the arts of humanity in that chief city of the East. And the spark of genius, which shone forth even then in the young men, was not hidden; for both of them accomplished much in a short time; but Cyril accomplished the most, who attained such renown in the sciences that, for a special reason, he was called "Philosopher." Not long afterward, Methodius began to live as a monk; but Cyril was deemed worthy to receive a mission from the Empress Theodora, with the approval of Patriarch Ignatius, to instruct the Khazars living beyond the Chersonesos in the Christian faith, who had implored suitable ministers of the sacred rites from Constantinople. And he accepted this task without hesitation. Therefore, he came to Chersonesos in Tauris, and, as some say, for a time devoted himself to the vernacular language of that people; and at that time, to him

[*Latin ed. p. 147*]

EPISCOPAL ENCYCLICAL 147. It so happened, under the most favorable auspices, that St. Clement, the first Pope, discovered the sacred relics, which he readily recognized, both from the accounts passed down through the memory of his predecessors, and from the anchor, with which the most valiant martyr was cast into the sea at the command of the Emperor Trajan, and which was then buried. — Having obtained possession of this precious treasure, he penetrated into the cities and settlements of the Khazars; whom, instructed by his teachings and inspired by the grace of God, he converted from manifold superstitions to Jesus Christ. He established a flourishing Christian community, providing a memorable example of both continence and charity, when he refused all gifts offered by the natives, except for the manumission of slaves who professed the Christian name. Soon afterwards, he returned to Constantinople, eager, and withdrew to the monastery of Polychronis, where Methodius had already taken refuge. Meanwhile, news of the successful affairs among the Khazars reached Rastislav, the prince of Moravia. He, encouraged by the example of the Khazars, petitioned Emperor Michael III to send several evangelists from Constantinople, which he easily obtained. Therefore, so many deeds having been accomplished, and the desire to help their neighbors evident in Cyril and Methodius, it was decided that they should be sent on a mission to Moravia. And as they set out on their journey through Bulgaria, they did not overlook any opportunity to promote the religion among the Christians. In Moravia itself, they were met by a large crowd at the borders of the empire, and received with great enthusiasm and joy. Without delay, they began to instill Christian principles into the minds of the people, and to raise them up in the hope of heavenly blessings; and they did so with such force and diligent effort, that in a short time, the people of Moravia willingly adopted the name of Jesus Christ. To this end, the knowledge

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of the Slavic language, which Cyril had learned beforehand, was of great help, and the sacred texts of both the Old and New Testaments, which he had rendered into the language of his people, were also very effective. Therefore, the entire Slavic nation owes much to him, for it has received not only the benefits of the Christian faith, but also the benefits of civil humanity, for Cyril and Methodius were the discoverers of the letters with which the language of the Slavs is written.

[*Latin ed. p. 148*]

148 ENCYCLICAL LETTER: And for this reason, the authors of this same account are not undeservedly held in esteem. The glory of their deeds had been announced to Rome by a second report from such distant and separate provinces. And so, when Nicholas I, the Pope, had ordered the most excellent brothers to come to Rome, they, without delay, carried out the command; and, having eagerly entered Roman territory, they brought with them the relics of St. Clement. Upon this news, Hadrian I, who had succeeded Nicholas in the office of Pope, accompanied by the clergy and the people, advanced to meet the illustrious guests with great solemnity and honor. The body of St. Clement, adorned with great and immediate miracles, was solemnly carried in a procession, following the same path as the martyr's ancestral home, and brought into the Basilica, which had been erected in Constantinian times. Then, Cyril and Methodius reported to the Supreme Pontiff, in the presence of the clergy, concerning their apostolic work, in which they had diligently and piously labored. And because they were accused of having acted contrary to the traditions of the ancients and the most holy religion, for having used the Slavic language in the performance of sacred rites, they gave an account of the matter with reasons so certain and so illustrious that the Pope, and the entire clergy, both praised and approved of them. Then, both of them, having recited the formula of the Catholic profession of faith, and having sworn to remain steadfast in the faith of the blessed Peter and the Roman Pontiffs, were created and consecrated as bishops by Hadrian himself, and many of their disciples were initiated into various orders of the priesthood. It was, however, divinely ordained that Cyril should establish the course of his life in Rome, on the fourteenth day of February in the year DCCCLXIX, maturing more through virtue than through age. He was carried to his eternal rest with a magnificent and public ceremony, in the same manner as the Roman Pontiffs are accustomed to be, and was honorably laid to rest in the tomb which Hadrian had built for him. Because the Roman people were unable to transport the sacred body of the deceased to Constantinople, despite the most heartfelt desire of his grieving parents, it was taken to the church of St. Clement, and his remains were buried near those of St. Clement, which Cyril himself had venerated and preserved for so many years. And as he was carried through the city amidst the chanting

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of festive psalms, it seemed to the Roman people that they were offering the most heavenly honors to the most holy man.

[*Latin ed. p. 149*]

ENCYCLICAL LETTER 149. When these things had been accomplished, Methodius, at the command and with the support of the Most Holy Pope, returned to Moravia as a bishop to resume his customary duties of the apostolic ministry. In that province, he established a flock with great zeal for the cause of the Catholic faith; he bravely resisted those who were the authors of new and disruptive innovations, lest the Catholic name be undermined by the madness of opinions; he instructed Prince Suentopolc, who had opposed Rastislav, in the true faith; and he admonished and rebuked those who were abandoning the faith, and finally, he punished them with ecclesiastical censure. For these reasons, he incurred the hatred of a most terrible and impure tyrant, who banished him into exile. But, after a time, he was restored, and, through timely exhortations, he persuaded the prince to show signs of repentance, and to understand that the old customs must be reformed by a new way of life. It is truly remarkable that the charity of Methodius, vigilant and watchful, extended beyond the borders of Moravia, just as it had touched the Liburnians and Serbs, who still survived, and now it encompassed the Pannonians, whose prince, named Kocel, he instructed in the Catholic faith, and kept him in the service of the Church; and the Bulgarians, whom he himself, together with their king, Bogoris, confirmed in the faith of Christ; and the Dalmatians, with whom he shared heavenly things and communicated graces; and the Carinthians, among whom he worked diligently to lead them to the knowledge and worship of the one true God. But this caused trouble for the man. For some, from the new society of Christians, because they envied the zeal and virtue of Methodius, petitioned John VIII, the successor of Hadrian, that he investigate the suspected faith of Methodius, and the violation of the ancient customs, whereby, in the celebration of the sacred rites, the Greek or Latin language alone was used, and nothing else. Then the Pope, most zealous for the safety of the faith and the preservation of the ancient discipline, summoned Methodius to Rome, and ordered him to clear himself of the charges. He, as he had always been eager to obey, and relying on the testimony of his conscience, appeared before John and several bishops, and the clergy of Rome, in the year 785, and easily refuted the charges, demonstrating that he had steadfastly maintained and diligently taught the very faith that he had sworn to uphold before the tomb of the Prince of the Apostles, in the presence of and with the approval of Hadrian; and that, with regard to the use of the Slavic language in the performance of the sacred rites, he had

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acted justly...

[*Latin ed. p. 150*]

150 ENCYCLICAL LETTER concerning the causes, with the permission of the Most Holy Pope Hadrian, and without contradicting the sacred writings, having lawfully proceeded. With this declaration, he so completely cleared himself of any suspicion of fault, that in the present matter, the Pope could willingly acknowledge the authority of Methodius as archbishop, and approve his Slavic mission. Furthermore, to several chosen bishops, whom Methodius himself would lead, and whose work would assist in the administration of Christian affairs, he sent a letter with honorable commendations to Moravia, with full authority. The Supreme Pontiff subsequently wished to confirm all these matters through letters sent to Methodius, knowing that he would again be subject to the envy of the wicked. Therefore, with a confident spirit, and closely united to the Supreme Pontiff and the entire Roman Church by the bonds of charity and faith, he persevered with even greater diligence in fulfilling the task assigned to him; and the excellent fruits of his labor were not long in coming. For, having first, through his own efforts, brought Prince Borzivoj of Bohemia, and then his wife Ludmilla, to the Catholic faith, with the help of a certain priest, he quickly brought it about that the name of Christ was widely and far spread among that people. At the same time, he endeavored to bring the light of the Gospel to Poland; and when he had traveled through Galicien, he established a bishopric in Lviv. From there, as some have recounted, he made a journey to Moscovia, of his own name, and established the pontifical throne of Kiev. Having achieved these, not insignificant, honors, he returned to his own people in Moravia; and already feeling himself being drawn towards his mortal end, he himself designated a successor; and exhorting the clergy and the people with the highest precepts to virtue, he peacefully passed away, his life having been to him a path to heaven. As Cyril was to Rome, so Methodius was to Moravia, and his loss was deeply mourned, his funeral being honored in every way. These events, Venerable Brothers, are a delightful reminder to us; and we are not a little moved when we look back and see the splendid union of the Slavic peoples with the Roman Church, which began with such excellent beginnings. Indeed, these two Christian propagators, of whom we have spoken, departed from Constantinople to the pagan peoples; nevertheless, their...

[*Latin ed. p. 151*]

ENCYCLICAL LETTER 151. It was fitting that the mission, sent from this Apostolic See, the center of Catholic unity, should either be entirely governed by us, or, which is a greater act of favor, be duly and piously approved. Indeed, here in the City of Rome, the reason for accepting this

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office was explained, and a response was given to the accusations. Here, the oath of fidelity to the Catholic faith was taken at the tombs of Peter and Paul, and the episcopal consecration was received, along with the power of the sacred ministry, while maintaining the distinction of orders. Furthermore, from here, the use of the Slavic language in the most sacred rites was established; and this year marks the tenth century since Pope John VIII wrote to Prince Suentopolc of MÃ¤hren: "We praise with due merit the Slavic letters by which praises are offered to God, and we command that the announcements and works of our Lord Christ be set forth in that same language. Nothing hinders the sound faith or doctrine, whether it be to sing Masses in that Slavic language, or to read the sacred Gospel, or divine readings from the Old and New Testaments, well translated and interpreted, or to perform all other hours of prayer. This custom was later confirmed on many occasions by Benedict XIV through Apostolic Letters dated August 25, 1744." – The Roman Pontiffs, whenever they have been asked for help by eminent princes who ruled over peoples, regarding the works of Cyril and Methodius for the conversion of Christians, have never failed to show their benevolence in helping, their humanity in teaching, their goodwill in giving counsel, and in all things in which they could, they have shown extraordinary zeal. In particular, Rastilaus, Suentopolc, Cocelus, the holy Ludmilla, and Bogoris experienced the outstanding charity of our predecessors for the sake of the people and the times. Moreover, the paternal concern of the Roman Pontiffs for the people of Slawonien did not cease with the death of Cyril and Methodius; but it always shone forth in preserving the sanctity of religion among them and in maintaining public prosperity. Indeed, Pope Nicholas I sent priests who would instruct the people, and bishops from Populonia and Portuensium, from the City of Rome, to order the newly converted Christians; also, he himself repeatedly gave answers regarding sacred law to the Bulgarians, in which even those who are less favorable to the Roman Church, find the highest...

[*Latin ed. p. 152*]

152. We praise and commend their prudence. And after the grievous calamity of the schism, it is fitting to note that Innocent III reconciled the Bulgarians with the Catholic Church, while Gregory I, Innocent IV, Nicholas IV, and Eugene IV maintained this reconciliation. — Similarly, concerning the Bosnians and Herzegovinians, who, deceived by false opinions, were infected with contagion, the charity of Our Predecessors, namely Innocent III and Innocent IV, shone forth greatly, who sought to draw error from their minds; Gregory IX, Clement VI, and Pius II, who endeavored to firmly establish the authority of the sacred power in those regions. — It should also be considered that Innocent III, Nicholas IV, Benedict XI, and Clement V showed great concern for the Serbs, against whom deceptions, cleverly devised to undermine the religion,

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were diligently directed. — Furthermore, the Dalmatians and Liburnians, because of their constancy in the faith and the exchange of offices, received singular favor and great praise from John X, Gregory VII, Gregory IX, and Urban IV. — Finally, in the Church of Servia, which was destroyed in the sixth century by barbarian incursions and subsequently restored through the pious efforts of Saint Stephen, King of Hungary, there are many monuments to the benevolence of Gregory IX and Clement XIV. Therefore, we understand that we ought to give thanks to God, because a fitting opportunity is given to us to benefit the Slavic people and to promote their common good, with no less zeal than has always been shown by Our Predecessors. Indeed, this is what we seek, this alone we desire: to strive with all our might that the peoples of Slavic name may be instructed by a greater number of bishops and priests; that they may be strengthened in the true faith, in true obedience to Jesus Christ and to the Church, and that they may daily experience more and more the great benefits that flow from the institutions of the Catholic Church to the domestic life and to all orders of the state. These Churches claim many and the greatest parts of Our concerns; and there is nothing that we desire more ardently than to promote their welfare and prosperity, and to keep them perpetually united with us by the bonds of concord, which is the greatest and best bond of security. It remains to be considered...

[*Latin ed. p. 153*]

The Encyclical Letter, rich in divine mercy, follows and confirms Our intentions. In the meantime, We invoke the intercession of Cyril and Methodius, the teachers of Slawonien, whose cult We desire to promote, and in whose heavenly patronage We place Our confidence. Therefore, We decree that, on the fifth day of July, which Pope Pius IX established, be inserted into the Roman Calendar and the Calendar of the entire Church, and that the feast of Saints Cyril and Methodius be celebrated annually with a Lesser Office and a proper Mass, which the Sacred Council has approved according to legitimate rites. To you all, Venerable Brothers, We command that you take care to publish these Letters, and that you instruct all clerics, in order, who celebrate the divine Office according to the rite of the Roman Church, to observe all that is prescribed herein, in their respective churches, provinces, states, dioceses, and places of religious orders. Finally, We desire, with your encouragement and exhortation, that Saints Cyril and Methodius be invoked and prayed to throughout the world, that, with the grace they possess before God, they may defend the Christian faith in the entire East, and that constancy be implored for Catholics, and that those who are separated may be reconciled with the true Church in a spirit of concord. These things, as above written, We command to be valid and firm, notwithstanding the Constitutions, statutes, and customs, even those of long standing, and all other contrary things, issued by Our Predecessor,

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the most holy Pope Pius V, and other Apostolic documents concerning the reform of the Roman Breviary and Missal. As a pledge of the heavenly benefits and of Our most sincere goodwill, We impart to you all, Venerable Brothers, and to the entire clergy and people of each of your Sees, Our paternal Apostolic blessing, earnestly in the Lord. Given at Rome, at Saint Peter's, on the thirtieth day of September, in the year 1880, in the third year of Our Pontificate. LEO XIII, Pope.

[*Latin ed. p. 154*]

LETTERS IN BRIEF FORM, BY WHICH FULL AND PARTIAL INDULGENCES ARE GRANTED TO CHURCHES OF SAINT VINCENT BY POPE LEO XIII. To all the faithful of Christ who shall read these letters, greetings and the apostolic blessing. Having recently received from Us, in the name of Our beloved son, John Baptist Borgogno, the general procurator of the Congregation of Secular Priests for the Missions, petitions requesting that, on the twenty-seventh day of the coming month of November, the entire religious family of Saint Vincent de Paul, in all and each of the churches and chapels belonging to the aforementioned pious house annexed to the respective Congregation, celebrate a certain feast in honor of the most blessed Virgin Mary, Immaculate, with particular devotion. And, so that nothing may be lacking for the spiritual comfort of the faithful and for a happy occasion, it was requested of Us that We would deign to grant a plenary indulgence on the aforementioned day, and a partial indulgence on certain other days, as will be specified below, through Our paternal benevolence. Furthermore, desiring to comply with such requests, and intent on increasing the faith of the faithful and the salvation of souls, with pious charity, We grant that to all and each of the religious men and women from the aforementioned Congregation of Saint Vincent de Paul, and to external laymen and laywomen of both sexes, if the laws of enclosure permit, who, truly penitent and having confessed, and having received the Holy Communion, shall devoutly visit the respective church or chapel of the aforementioned pious house belonging to this Congregation on the twenty-seventh day of the coming month of November, from the first vespers until sunset on that day, and there shall offer pious prayers to God for the concord of Christian princes, the eradication of heresies, the conversion of sinners, and the exaltation of the Holy Mother Church, a plenary indulgence for all their sins shall be granted and remitted mercifully.

[*Latin ed. p. 155*]

By this brief, number 155, We grant [these things]. Furthermore, We grant to those same religious men and women, and also to other faithful Christians, as mentioned above, that those who, with a contrite heart, shall devoutly visit the respective church and each pious house of the Congregation of Saint Vincent de Paul, from the aforementioned twenty-seventh day

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of the coming month of November until the eighteenth day of the following month of December, and there, as stated above, shall have prayed on those days, We grant one hundred days of remission from the penances imposed upon them, or, if they prefer, in another manner, of indulgences, according to the custom of the church. And We grant that all and each of these indulgences, remissions of sins, and relaxations of penances, may also be applied for the benefit of the souls of the faithful detained in Purgatory, as a suffrage. These [grants] are valid only for the present year. We decree that to these present letters, or to copies or printed exemplars thereof, signed by the hand of a public notary and sealed with the seal of a person holding an ecclesiastical office, the same faith shall be given as would be given to these present [letters], if they were exhibited or shown. Given at Rome, at Saint Peter's, under the Fisherman's ring, on the ninth day of July, 1880, in the third year of Our Pontificate. TH. CARDINALIS MERTEL, in place of the Secretary, Seal.

[*Latin ed. p. 156*]

156 FROM THE HOLY CONGREGATION OF THE COUNCIL OPTION (i). On April 26th and August 23rd, 1879. SUMMARY OF FACTS. The Chapter of the Cathedral Church of Á, whose origins are obscured by the ravages of time and the loss of documents, in the darkness of antiquity, consisted in the year 1705 of ten Canons, besides two Dignities, namely the Archdeacon and the Primicerius. The revenues of the Chapter were derived from five double benefices, of which each Canon received half, and also from a certain small common fund, which was divided equally among the same Canons for daily expenses. Over time, however, the benefices began to be and are now administered separately, except for the Penitentiary, which still remains united to another Canon, and two others, which were joined to others at the beginning of this century. Among the Canons, the system of option is maintained, in accordance with the Episcopal decree of December 7th, 1828, which states: "We wish, moreover, to decree and establish that henceforth the Archdeacon, Primicerius, Theological Canon, Penitentiary, Curate, and other Canons in office... may choose and assume the Canonries that become vacant, always observing the precedence of the degrees of dignity and choral service among those who are choosing, and always excluding from the aforementioned option the Canonries of the Archdeacon, Primicerius, Theological Canon, Penitentiary, and Curate, which must be kept for their successors, and which, during the time of the vacancy, shall be administered by the Economus of the Chapter." (1) See Volume VIII of these annals, page 350 and following.

[*Latin ed. p. 157*]

The matter in question: On January 1, 1878, Canon James Vessella passed away, and with his death, the canonry he held also became vacant. Aloysius

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Paterno, a simple Cathedral Canon, desired to fill this vacancy, confident in his seniority. However, the Theological Canon and the Penitentiary Canon declared that, according to the established order, the right to be offered the vacancy belonged to them before Canon Paterno; therefore, this matter was brought before the Sacred Congregation of Councils. Furthermore, the Primicerius, aged 87, declared that he also wished to be considered for the vacancy. With these declarations made, the Chapter expressed its preference for the Primicerius, and in his absence, for the Theological Canon and the Penitentiary Canon.

Those who oppose Canon Paterno argue that Canon Paterno is attempting to circumvent the established order. They assert that, even if the Theological Canon and the Penitentiary Canon were, for reasons of incompatibility, unable to accept the vacancy, the right to be offered it would not belong to Canon Paterno, but to the Primicerius Panella, due to his seniority. Moreover, they claim that Canon Paterno did not formally express his will to be considered for the vacancy until the very last moment; for the matter was still pending, and no one had yet claimed a right to the position, so it cannot be said that the opportunity has been lost, as Gonzaeus states, concerning option, institution, presentation, and other similar matters, in *Glossa ordinum canonicorum*, 45 § 3, n. 4 and following, and Gratian, *Disputationes*, part I, 746, n. 13 and following.

WHAT IS OPPOSED TO CANON PATERNO. The Canons: If it were to be maintained that Primicerius Panella has lost the right to be offered the vacancy, then the Theological Canon and the Penitentiary Canon should be preferred to Canon Paterno. For, if it is observed that the right to be offered a position is not based on common law, but on a statute, custom, or Apostolic privilege, as stated by Boniface VIII in the aforementioned passage concerning custom, chapter 6, and as the Doctors state in *Moneta de optione*, chapter 2, n. 1, and as Gagliardi comments on the cited canon, and as Fargna states in *De iure patronatus*, page 2, chapter 26, section 1.

[*Latin ed. p. 158*]

158. From the statute, it is manifest that neither a Theologus nor a Poenitentiarius is excluded by law from the option; for it is held that it is permissible for a Canonically appointed Theologus or Poenitentiarius to choose, subsequently, the canonical portions that will become vacant. Furthermore, this statute does not, in this matter, contradict common law. Indeed, the general rule regarding the option, with respect to those mentioned, receives a limitation, if those who possess smaller benefices are admitted to the right to choose a better one, under the condition that they relinquish their present benefice, as Ventriglia states in *Praxis fori ecclesiastici*, part 2, annotation 42, § 2, no. 8; and as Cardinal Petrucci states in his commentary on Constitution II of Innocent VI, volume 4, page 249, no. 25. For it is necessary that a Canonically appointed

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Theologus and Poenitentiarius, who undertake a greater burden, should perpetually possess smaller emoluments, than other simple Canons (Petrucci, *loc. cit.*). Moreover, it is well known in law that a Theologus and a Poenitentiarius cannot choose, when benefices are divided, but they can, if the Chapter's goods are drawn from a common fund. This is clear from the teaching of Garcia in *De Beneficiis*, part 6, chapter 4, no. 455, and from the resolution of the Sacred Congregation of Rites in the case of Pinnen, dated February 26, 1859. This is clearly verified in Chapter A, from which the funds were originally drawn from a common fund. And there is no record of any division of this fund, except that at a later time the common fund was divided into smaller funds, only with the consent of the Bishop, but true and distinct benefices were not formed. Where, however, a certain benefice is not established, both the Theologus and the Poenitentiarius can choose, according to the opinion of the Sacred Congregation, as reported by Pirro Corrado in his *Praxis beneficierum*, book 44, chapter 45, no. 24: "It is not possible to choose a benefice which has been established and designated for a Theologus by a subsequent Canon, but a Poenitentiarius to whom a certain benefice has been designated and assigned can choose." Less helpful to the plaintiff's case is the argument of Father Paternò, based on custom, regarding the non-use of the right of option by the Theologus and the Poenitentiarius. For in this case, we are dealing with a purely facultative act, against which no prescription runs, unless after a prohibition and legitimate acquiescence (text *Finalis De Consuetudine*, Bota, decree 846, no. 2, *cor.*).

[*Latin ed. p. 159*]

159. CONCERNING WHAT FAVORS THE PATERNAL CANON: Although it cannot be doubted that the right of option pertains to the senior canon, nevertheless, this right must be exercised by the senior within the time established by law. If it lapses without being exercised, the right of option immediately devolves to the next senior canon according to the text, in chapter "Finis," § last, concerning Customs, in 6; Gonzales, "Ad Reg.," 8; "Cancell.," gloss, 34, n. 35; Barbos, loc. cit., chapter 30, n. 5; Vivian, "De Iure Patr.," p. 2, book 8, chapter 5, n. 1. The time for such an exercise, according to common law, is twenty days from the day of the vacancy, or rather, from the day of credible knowledge thereof, as stated after the Constitution of Boniface VIII, in the last chapter. Gonzales, in "Ad Reg.," 8, "Cancell.," gloss, 34, n. 75; Barbosa, "De Canon.," chapter 30, n. 5; Scarfant, loc. cit., n. 9, state: "From this definition, it is gathered that the option for a vacant prebend must be made by the senior within a certain time, namely, according to common law, within twenty days from the day of the vacancy, or rather, from the day of credible knowledge thereof." Having fulfilled these legal requirements, and setting aside the fact that, according to the custom in force in the Church of A., the option must be exercised

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within eight days, the Paternal Canon argues that the Primicerius, in order to grant a prebend to a candidate, waited approximately four months after the vacancy resulting from the death of Canon Vessella, which he knew immediately, since they both lived in the same city. It is noted that neither the Theologus nor the Penitentiarius are entitled to exercise the option, because their offices are perpetually attached to the granting of prebends, based on the qualities required in the person to whom it is granted. Therefore, neither the Theologus nor the Penitentiarius, whether retaining or relinquishing their office, can exercise the option for prebends without a special dispensation; although, with respect to other canons, a special statute or privilege may have been granted to allow this. Thus, they all state: Passerin, in "Cap. Cum in tua de consuet."; Monet, loc. cit., chapter 3, question 5; Constantin, "Vot.," 530, n. 1, seq.; Barbos, loc. cit., chapter 26, n. 23, seq.; "S. C. in Volaterrana," May 4, 1598, book 9, decret, page 60; again, in "Àsten.," February 26, 1606, apud Garz., "De Benef.," part 5, chapter 4, n. 134, and in "Sebenicen.," December 2, 1651, apud Constantin, "Vot.," 530, n. 4. This must also be considered in the case,

[*Latin ed. p. 160*]

160. The question of which option should be offered regarding the communal mass is addressed by Navarr in his *Consilia*, book 4, on ecclesiastical matters, not pertaining to other matters. Paterno maintains that the opinion of Navarr, though overlooked, is indeed the correct one, as the Canons assert that the communal mass was established by canon law, but there is insufficient proof of this, while there are numerous documents that demonstrate the opposite. From this, he concludes that the principle upon which the Canons rely is false, and therefore, all the consequences derived from it to support the preference for the older theologians and Penitentiaries are also false. Furthermore, considering the expenses of the Bishops and Chapters, it is evident from ancient times that the canonries of this Church were established in distinct benefices. Having considered all these points, the question arose for the Most Eminent and Reverend Fathers: what response should be given regarding the matter, and in whose favor should the option lie in this case?

RESOLUTION. After careful deliberation in the general congregation on April 26, 1879, the Holy Congregation responded: "Deferred and considered." The Prefect of the Congregation, following established practice, presented a memorandum detailing the revenues and expenses of the individual benefices, and reported that each canonry had a fixed and certain benefice until the year 1839, when the decree was issued. From that year, he stated, the theological benefice had been vacant once, and the Penitentiary benefice had also been vacant once. After considering these matters as well, the same Holy Congregation, on August 23, 1879, again addressed the question: whether and in whose favor the option should lie in this

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case. — It responded: "Affirmatively, in favor of the Canon of Theology," but with the condition that the desired benefice should thereafter remain permanently attached to the theological canonry.

FROM WHICH IT MAY BE GATHERED: I. In many Chapters, either by privilege, by statute, or by custom, it is the case that the Canons...

[*Latin ed. p. 161*]

161. Those who possess more abundant resources, whenever they are available, shall have the right to choose.

II. According to the sacred canons, it is to be understood that the order for exercising the right of choosing among benefices is to be observed by the Canons, and that this right is granted to them not by reason of their office, but by reason of the longer service rendered to the Church.

III. However, this right is to be exercised by the more senior Canon within the time established by the sacred canons; which, by common law, is twenty days from the day of the vacancy, or rather, from the day of the likely notification thereof.

IV. Since it is commonly considered in matters of benefices that the union of office and a benefice should always take precedence, therefore, the Theologian and the Penitentiary (1) are expressly excluded from the right of choosing, because for these two offices, the special industry and ability of a person are required, which also demand a suitable benefice.

V. However, by a special concession of the Holy Father, the Theologian and the Penitentiary may choose a better benefice, provided that their offices have been too meager; until they attain to one of the more substantial ones, which is understood to be permanently associated with their offices.

VI. It seems less fitting that the Theologian and the Penitentiary should be obliged to use smaller benefices perpetually, while bearing a greater burden among the chapter.

VII. In the matter, the Primicerius Panella was, by law, excluded from the right of choosing a benefice, because he did not choose during the opportune time; and, deservedly, the vacant benefice was granted to the Theologian as the more senior, with the addition of the condition that he should be permanently devoted to this office.

(1) What is said about the Theologian should be understood also about the Penitentiary; for the Sacred Congregation established that the same rights apply to both. See Vicentina, Optiones, 31 January 1852, § prima; Bellunen, Erect. Praeb. Poen. 23 April 1864. Acta, Vol. XIII, fol. O XLVIII, 11.

[*Latin ed. p. 162*]

162. PRECEDENCE. On August 23, 1879, a dispute arose within the diocese of A. concerning the precedence of two lay confraternities, one ded-

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icated to the Most Holy Sacrament, and the other to Saint Mary of Sorrows, particularly in funerals and processions. The matter was ultimately brought before the episcopal curia, and the Vicar General issued the following judgment on February 27, 1878: "We pronounce... that the confraternity of Saint Mary of Sorrows is to have precedence in processions, whether they are held for the purpose of funerals, or for other solemnities, over the confraternity of the Most Holy Sacrament, with the exception of the right that is due to the latter by the Royal Decree or rescript of August 23, 1843, in processions of the Body of Christ." The members of this confraternity appealed this decision to the Sacred Congregation. The Most Reverend Prelate, with due diligence, transmitted the records of the proceedings and the relevant information, in which he sought to demonstrate that the judgment of the Vicar General was unjust.

SUMMARY OF THE FACTS. DISPUTE. RIGHTS OF THE CONFRATERNITY OF THE MOST HOLY SACRAMENT.

In this matter, in order to refute the judgment, it must be considered, as is verified in the theme, that in matters of precedence, dignity is the primary consideration, so that those of greater dignity should always precede those of lesser dignity; as Barbosa states in the Summa Apostolica, in the section on "precedence," number 2, in agreement with the opinion of the canonists and the Sacred Congregation of Rites in the case of Saint Severinus, September 1, 1607. In general, and in particular with regard to lay confraternities in both public and private processions, a special Constitution of Gregory XIII, beginning with the word "Exposcit," has established that precedence should be given to those who are found to possess, by established custom, the right of precedence: "Qui prior est in tempore, potior est in iure" (He who is first in time, is stronger in right). This resolution is in accordance with the decision of the Sacred Rites.

[*Latin ed. p. 163*]

PRECEDENCE 163. Congregations in Nepesina, May 4, 1808, and in Thelesina, March 19, 1841. If it cannot be established to whom the right of precedence belongs, then those who first used the palls must precede. Cited: Constitutions, and the Sacred Congregation of Rites in Sorana, August 7, 1827, and in Severini, September 24, 1842. Rota decisions 779, number 4, before Merici and Panimolla, decisions 4, number 2. These are in agreement with Constitution 439 of Urban VIII and the Institutions of the Church 405 of Benedict XIV. The Brothers of St. Mary cannot claim precedence based on a document found in a paper diploma dated January 7, 1778, which purports to establish their confraternity; for such a document, as well as the other items contained in the same diploma, are found to be completely corrupted, burned, as noted by the superiors, and indeed are written in a completely different ink, as is immediately apparent to anyone who examines them. However, it is a settled principle of law that no one

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should be aided by their own fraud. Rota decision 42, number 4, concerning tithes, before Falconeri, according to the text in I, 42 ff. concerning thefts, and in I, 43 ff. concerning deceit. However, if the hypothesis were proven, which would demonstrate that the presented document is authentic, then the confraternity of the Most Holy Sacrament would retain its undisturbed right of precedence. Indeed, a recently presented document shows that this confraternity existed as early as the year 1539, when Pope Paul III granted graces and indulgences to the brothers of the aforementioned confraternity through his Bull. And therefore, although it may have been suppressed by civil authority, as the opposing party themselves contend, it must be said that it has not lost its proper rights, but rather has regained them by the law of postliminy, according to L. 49 ff. De captiv. et Postlim. (1) For, indeed, confraternities captured in war by the Romans were surrendered to the enemy who captured them; but when recovered, they enjoyed the right of postliminy and returned to their former lords. Hence, this right is the right of recovering a thing lost from an alien and restoring it to its former state. — Not that things were surrendered to the victors, but rather that the citizens themselves, captured in war, became the slaves of the victors; nevertheless, upon returning to the borders of their former empire, by force of the law of postliminy, they regained their former status, their rights, and all that had been lost through captivity. It has been deemed that the confraternity of the Most Holy Sacrament can avail itself of this right to demonstrate its proper seniority, because, although it was forcibly suppressed by an incompetent secular authority, some trace of it remains.

[*Latin ed. p. 164*]

164. Precedents and rights are acquired; whatever secular power or any external force may attempt, a person can never be deprived of their rights or person without a legitimate definition by the Church, as Piton teaches in his Disputations on Church Law, book 8, paragraph 17. All difficulty is avoided if one considers the observance, which has great efficacy in matters of precedence, as noted by the Rota in recent decisions, part 18, decision 781, number 5, and decision 232, number 2, before Olivario. Therefore, since the observance benefits the confraternity of the Most Holy Sacrament, it seems impossible to doubt that these members should be maintained in the quasi-possession of this right. Indeed, a centennial possession provides a better title in the eyes of the world, as the Rota states in recent decision 678, paragraph 12, before Odescalchi. In this case, the Bishop declares the observance to be centennial, belonging to the Most Holy Virgin Mary of Sorrows. On the other hand, those who defend the rights of the Confraternity of Saint Mary of Sorrows argue that this Confraternity should be granted precedence for three reasons: 1. due to the earlier canonical erection; 2. due to the earlier restoration to its former state; 3. because it has obtained and legally possesses the privilege of the title of Archconfraternity. Regarding

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the first point, the defender affirms that the Confraternity of Saint Mary was canonically erected as early as the year 1586, and maintained its legal existence until the year 1770, for one hundred and eighty-four years, at which time it was suppressed by the government. From this, he infers that it possessed a centennial canonical erection, which should be considered a better title in the eyes of the world, having the same authority as the law itself or an Apostolic privilege. The Rota states this in decision 1352, number 6, before Lancetta; Cardinal De Luca, on benefices, volume 12, discussion 32, numbers 2 and 4; Schmalzgrueber, volume 1, part 1, title 4, number 31; the Sacred Congregation of the Council, in numerous resolutions, and especially in the decree *Nullius Sublacen*, January 29, 1825, paragraph *Rationabilis*. RIGHTS OF CONFRATERNITIES. Therefore, just as the rights of citizens are suspended only by the force of the enemy, but are not extinguished; so too, the rights and person of the Sodalitas were only suspended in this case, and were by no means removed, and must be maintained. Hence, with the suppression decree removed, all the rights and the person of the same Sodalitas revive and return to their former state.

[*Latin ed. p. 165*]

PRECEDENCE 165: Whether the law of amortization promulgated by the government in the year 1780, which suppressed the aforementioned institution, should be considered valid: For the suppression of such an institution should not be carried out, since it proceeded from one who did not possess the competent authority; therefore, the juridical existence of the Confraternity of Saint Mary does not seem to have been in any way interrupted, although, by means of the aforementioned secular law, it was compelled to request royal approval, which it did not obtain until January 7, 1777. But, supposing, and it was never granted, that it was rightly and lawfully suppressed, the cause and condition of the Confraternity of the Most Holy Sacrament would not have suffered any detriment, since its erection occurred only on August 8 of the year 1777, that is, several months after the restoration to its former state of the Sodality of the Blessed Virgin of Sorrows, which was again revived by a Royal Decree issued on November 17, 1776, and published on January 7, 1778, although the decree provided that it should possess juridical existence from the date of the issuance of the royal approval. Indeed, all canonists, with almost unanimous agreement, hold that precedence is due to the one to whom greater prominence of dignity or rank belongs; precedence is due to the one who is favored by the priority of time among those of equal dignity or rank. Therefore, since the Confraternity of Saint Mary has the priority of time, whether with regard to its erection or with regard to its restoration to its former state, it certainly has precedence over the Confraternity of the Most Holy Sacrament. Even more so, because it remained suppressed from the year 1846, and not by a general law, but by an improper appropriation of funds, and was restored

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to its former state only in the year 1854. Finally, the advocate argues that precedence should be given to the more worthy over the less worthy; and in this matter, he maintains that the Confraternity of Saint Mary is more worthy, being adorned with the title of Archconfraternity. To prove this, in the absence of the original decree by which such a privilege was granted by the King in accordance with the concordat, he presents a copy of the same, which is preserved with the public Notary, and which is dated July 7, 1777, and furthermore, he invokes the authority of the Archbishop of Zunica, who, in the decree of confirmation of the privilege, calls the Sodality an Archconfraternity. After considering these matters, the matter was referred to the judges to decide what response should be given.

[*Latin ed. p. 166*]

166. PRECEDENCE. Whether the opinion of the Curia of February 27, 1878, should be confirmed or rejected in this case. RESOLUTION. The Sacred Congregation of the Council, after deliberation on August 23, 1879, responded: Negatively to the first part; affirmatively to the second, and furthermore. FROM WHICH THE FOLLOWING MAY BE GATHERED: I. In matters of precedence, the dignity must first be considered: so that those of higher dignity should always precede those of lesser dignity. II. Among equals, precedence, according to the rule – he who is first in time is superior in right – is due to that one who is already found to be in quasi-possession and in the right to precede. (1) III. When proofs are lacking to determine to whom precedence belongs among confraternities in dispute, quasi-possession, having been established by law, should favor those who have previously used the sacristy. IV. In the absence of other proofs, the greatest consideration should be given to determining which confraternity should precede among confratres who are otherwise equal. V. In the matter of precedence in funerals and processions, precedence belongs to the confraternity of the Most Holy Sacrament, because this confraternity preceded the other in canonical erection, and if they are equal among themselves; when, however, the title of the Archconfraternity has been impudently usurped by the opposing confraternity. (1) Gregory XIII declared in the Constitution *Exposcit pastoralis*, § 3, that precedence belongs among the Mendicant Orders and among lay confraternities: "By the fullness of the powers attributed to us, we wish and, by our Apostolic authority, decree that whoever, of the aforementioned Mendicant Orders, are contending among themselves about such precedence, or among the aforementioned confraternities, among whom disputes and causes have already arisen, or may arise in the future, who are in quasi-possession of precedence and of the right to precede, they... must precede in both public and private processions. When, however, proof of such precedence is not shown or is not established, among the aforementioned Mendicant Orders, those who are older in the place of contention; among confratres, however,

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among themselves in dispute, those who have previously used the sacristy, must precede in both public and private processions....”

[*Latin ed. p. 167*]

PRECEDENTS 167 VI. Hence, it is rightly affirmed that the judgment of the Vicar General was invalid; for it, perhaps through a fault of understanding, was based on flawed evidence; evidence which, misled by piety, could not be produced, but which was rather the result of an immoderate desire to dominate others. MINUTES OF THE CHOIR, July 26, 1879. SUMMARY OF FACTS. Peter of Messines ordered the establishment of eight canonries, from his hereditary estate, in the parish church dedicated to Saint Lawrence, in the Diocese of N. He imposed the same law indiscriminately on the dignitaries and the canons, so that all should daily chant the Divine Office, administer the sacraments of confession, and attend the Masses with singing. By Apostolic Bulls of March 1, 1737, a collegiate church was established, consisting of those eight canons and twelve others to be appointed by right, among whom two were distinguished by the dignity of Cantor and Dean, and were entrusted with the care of souls. Regarding the canons instituted by Messines, the Supreme Pontiff decreed the following: ”And whenever the Cantor and Dean, in the exercise of the care of souls, or in the administration of the sacraments of the Church, and six canons, are occupied in the reception of confessions, they shall be considered present, and the aforementioned distributions shall be granted to them and to each of them in proportion to what is due to them, and they shall respectively be able and obligated to receive and demand them, etc.” In the past century, by other Apostolic Bulls of May 31, 1844, the aforementioned church was adorned with an Episcopal Cathedra; and in those same Bulls, the obligations of the canons were confirmed as follows: ”So that the twenty canonical prebends, without the issuance of Bulls, for this occasion only, shall be retained and possessed by the current rectors, with the same obligations originally attached to them.”

[*Latin ed. p. 168*]

168 SERVICES OF THE CHOIR. The Canons of the collegiate church of Messines, instituted by Peter of Messines, to whom it is indeed prescribed to administer the Sacrament of Penance, considered that they could be excused from hearing sacramental confessions during the time of divine service, without thereby depriving themselves of the daily distributions; which, perhaps, some Canons, bearing a heavy heart, complained of to the Bishop, so that he might restore them to the observance of the common law. After two friendly and repeated warnings given two years ago, the Bishop, compelled to maintain choral discipline, issued an order on March 9th of the preceding year, 1878, that, except for the Singer (in whom alone parochial care now resides) and the Penitentiary, the other Canons

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who heard the confessions of the faithful during the time of divine service, should lose their daily distributions, and, moreover, incur the penalty of suspension from celebrating Mass for one day following a violation of the order. Then the Canons appealed to the Holy See regarding the loss of the daily distributions, and regarding the penalty of suspension. The Canons, who seek to avoid the suspension threatened by the Bishop, argue that, since they have already suffered the penalty of the loss of distributions, as decreed by the Council of Trent, Session 24, chapter 42, concerning reform, the Bishop cannot therefore impose another, more severe, penalty upon them. Secondly, they maintain that they are considered to have habitual care of souls, but actual care only in the absence of a Singer or Parish Priest; in which case, the Canon of turno exercises that same care by his own right. These are the arguments based on law; in fact, they add other considerations, which they endeavor to show to be opportune and necessary, in order to demonstrate the importance of the ministry of confessors during the time of divine service. Furthermore, this practice has been observed since the erection of the collegiate church, until the day the suspension was imposed; and always with such religious prudence that never was half of the Canons lacking in the choir. This is the DEFENSE OF THE CANONS. EX.

[*Latin ed. p. 169*]

The service of the choir asserts that the practice of confessions is beneficial to the faithful, especially to those who reside within the parish, particularly in these times, since no fewer than five religious houses within the same parish have been suppressed, in which the parishioners used to receive the sacrament of penance. However, the more opportune hour, especially during the winter, is from the ninth hour to noon, during which time the divine office is recited; thus, during this period of time, in which the Canons have abstained from this ministry due to the penalty of suspension, confessions have become infrequent. Furthermore, they add that the Canon Penitentiary has been unable to perform his office for more than nine years, because, in addition to being in his eighties, he suffers from chronic infirmity. The Bishop, defending the mandate he issued, explains all of this in his report, stating that he opposed it in various discussions with the Parish Cantor, with the Canons present. And first of all, he complains about the disobedience of the aforementioned Canons, because they have spent two full years promising to obey his exhortations, and have never fulfilled them, and he says that they invoke, in vain, the conciliar decree which punishes those absent from the choir with the deprivation of one distribution; because the penalty of suspension can be imposed by the Ordinary even for a minor offense. He also added that it is not unlawful for even a lower judge to increase or decrease the penalties established by law for particular cases; since special circumstances, such as a habit of

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wrongdoing, seem to be sought, Benedict XIV, *Inst. tit. 107%, VI, n. 38 and §. VIII, n. 44. However, the Bishop has not sought any assistance for the Canons from the law of Peter of Messines, because the pious testator willed that the burdens imposed by him should be fulfilled, indeed, but at different times, so that all might be fulfilled. Furthermore, the force of the Bull for the erection of the collegiate church has ceased to exist after the Bull for the erection of the same collegiate church into a cathedral. Nor can the words of this Bull, "with the same burdens originally annexed," be said to favor the Canons, because these must be understood in the context of the DEFENSE OF THE BISHOP.

[*Latin ed. p. 170*]

470 The duties of the choir, with their associated obligations, pertain only to those two Orders which are charged with the care of souls. To exempt someone from the choir in order to hear sacramental confessions, to any object, without incurring any penalty, cannot be called a favor, a grace, or a privilege, but certainly not a burden or a hardship. However, although it may be supposed that such a privilege was granted by a Bull establishing the Collegiate Church, it was revoked by another Bull which elevated the Collegiate Church to the status of a Cathedral; as can be gathered from the very words of the Bull: "Furthermore, since, for the reasons mentioned above, it is entirely fitting to raise the aforementioned Church of Saint Lawrence to the dignity of a Cathedral, and since this requires that the collegiate title previously held be suppressed, therefore we remove from the same Church of Saint Lawrence, and from its Chapter, the collegiate title, and abolish it forever, together with all favors, graces, prerogatives, and privileges previously obtained or legitimately sought, and applied." Finally, the Ordinary, concerned for the convenience of the faithful, stated that the number of faithful who come to receive the sacraments is not so great that the Canons must abandon the choir; indeed, within a week, only a small number of women seek the sacraments, while men rarely come to the church, and not all, for the sacrament of penance. However, it has been observed that eight Canons were charged with the duty of hearing confessions. Nevertheless, this obligation, intended to be fulfilled during the time of divine office, seems to be entirely foreign to both canon law and the will of the testator. For, as is clear from all the sacred canons, and from the decrees of the Council of Trent (Tridentini), the Canons are penalized with the loss of their daily distributions for absence from the choir, session 24, chapter 12, on reform: "Those who have been present at the appointed hours shall receive the distributions; the others, without any collusion or remission, shall be deprived of them." Furthermore, it is granted to a single confessor the faculty to be considered as present in the choir while he is seated in the confessional, session 24, chapter 8, on reform: "While he hears confessions in the church, he shall be considered as present in the choir."

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From this, it is easily inferred that—

[*Latin ed. p. 171*]

The services of the choir do not permit this, as defined by the Sacred Congregation of Rites in Rome, in the "Services of the Choir" of December 23, 1690, in the case of the Chapter of Saint Mary in Cosmedin of the City. There are laws of this kind, which constitute the public and general order in the discipline of the Church, while determining the nature and essence of the office of the Canons. Whatever the will of the founder may conceive in the erection of a collegiate church and its canons, it can never be admitted if it intends to subvert this fundamental law, namely, that the canons must chant in the choir, sing Mass conventually, and perform other such offices, because it would subvert the very object of the law itself, and of their own creation and institution. And this would clearly happen in practice, because if each canon were to consider himself to have fulfilled this obligation, and to exercise the faculty granted to him by a testament, one after another would leave the choir, and the divine chanting, in which the office of the canons consists, would be completely extinguished; which cannot be admitted in any way, since it would leave the very institution entirely at the discretion of the canons. Nor does it seem that the observance or custom, which they claim has been in force since the erection, is of any benefit to the canons, for such a custom is neither approved nor sustainable, as Passerini states in chapter on custom of clerics who do not reside, rule 10, number 163: "A custom cannot be introduced by a precise deputation or by the lawful license of a superior, so that canons, not attending the choir for the purpose of celebrating private Masses, may profit from distributions; for the reason of encouraging canons to frequent celebration, with prejudice to the obligation to attend the choir, is neither reasonable nor a new and special reason, but a general and foreseen one by law, and is disapproved; because only three others have been approved; and the same must be said for those absent for the purpose of hearing confessions," as Fagnanus states in chapter on prebends, number 118, and Benedict XIV, Institutes, 107, number 76. Furthermore, in order to make the definition of the controversy clearer from the examples of the Sacred Congregation of Rites, the judgment pronounced by the same Sacred Congregation of Rites in Agrigento, on the Distribution of April 1, 1876, is opportune.

[*Latin ed. p. 172*]

Regarding the services of the choir, which were established by the Bishop, it was customary in the Chapter of that Church of Agrigento that the Canons, after the Chapter meeting, should hear the confessions of the faithful at Lauds and Vespers, which caused considerable detriment to the choral singing, since there were no fewer than sixty Canons and mansionaries, and the habitual care of souls resided in the Chapter. The

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following questions were proposed in the Sacred Congregation: I. Whether and how the custom of celebrating Masses, both in the church and in the chapel, during the hours of the Divine Office, can be maintained for the benefit of the faithful. II. Whether and how the custom of hearing sacramental confessions during the hours of the Divine Office can be maintained for the benefit of the faithful. To both of these questions, the following response was given: "Regarding I and II, the custom cannot be maintained. However, under particular circumstances, a norm proposed by the Bishop, with the consent of the Chapter, may be admitted, with the approval of the Prefect of the choir; and the Bishop must ensure that there are not lacking Masses before and after the choir." Furthermore, concerning the Bishop's mandate of imposing penalties on those who violate the suspension, although it may be maintained, according to the conspicuous note of the Most Reverend Fathers, that a suspension is effective even for a minor offense, as testified by Schmalzgrueb, volume 5, part II, title 39, number 59, nevertheless, in the present matter, it may perhaps seem excessive, and therefore should be tempered. Indeed, in the two years during which the Bishop and the Canons discussed the restoration of this choral discipline, the Canons were never subjected to penalties. Although the Bishop could have obligated the penholders to impose fines on those who were absent, according to the norm of the conciliar decree, "and those who are present at the appointed hours shall receive [the distribution], while the others, without any collusion or remission, shall be deprived of it," nevertheless, the matter proceeded to a suspension. It seems more consonant with justice that the penholders should submit to this penalty, so that, through a fine imposed by law, the ordinary remedy might be experienced, rather than that it be imposed on the Canons, who, as they believe, are bound both by the founder's disposition and by custom, and who consider themselves to be in quasi-possession of the right. (1) You have this question in Volume IX, page 382.

[*Latin ed. p. 173*]

Regarding the service of the choir, it is also believed that the confessions of the faithful, even when the Divine Office continues, satisfy their own obligation. It is not, therefore, unreasonable to consider the complaint of the canons, who are punished with a heavier penalty while engaged in the sacred ministry, than those canons who are absent from the choir, and who wander in the streets and alleys. And if the deprivation of distributions had proven less disadvantageous, then nothing would have prevented the imposition of a more severe penalty of suspension. After these considerations, the Most Reverend Fathers decided to clarify the following question: Whether and how the penalty of deprivation of choral distributions, and suspension, is to be applied in this case?

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RESOLUTION. The Sacred Congregation responded on July 26, 1879: Affirmatively, with regard to the deprivation of distributions.

FROM WHICH THE FOLLOWING MAY BE GATHERED:

I. That there is a general law by which canons absent from the choir are penalized by the loss of daily distributions: "Those who are present at the appointed hours shall receive distributions (Tridentine Council, Session 24, chapter 12, on reforms); the rest... shall be deprived of these." Except for the confessor, who "while (in the aforementioned session, chapter 8) hearing confessions in the church, is considered to be present in the choir."

II. That such a law constitutes the nature and essence of the canonical office; so that whoever established the canonry, by ordering that canons not chant in the choir, or not sing the conventual Mass, would subvert the very object of the institution.

III. Therefore, it is reasonable to consider that the founder of the canonry, by imposing other obligations, besides the common ones of all canons, does not intend to exempt the canons he has instituted from their own proper obligations and those common to all, but rather to impose new ones upon them.

IV. Therefore, it seems pious to believe that the founder ordered that the canons he founded, being endowed with the faculty of hearing the confessions of the faithful, should also be charged with such a duty, without detriment to the Divine psalmody.

[*Latin ed. p. 174*]

174. In the year 1739, on the 20th of December, by order of the Bishop, and following the petitions of sixteen priests of the city, it was established that, in the association for the burial of the dead, when priests were invited, a turnus should be observed, beginning with the oldest, until all had benefited from this service. From this, it seems to have originated a certain Congregation of Priests, to which the name Urbana was given. This turnus appears to have lasted for a time, as it is evident from the acts of this Congregation, dated 1777, that the turnus established by the decree of 1739 was to be revived, but in such a way that, in turn, one of the vicars should be included. In 1778, this Congregation established its own statutes, which were approved by the Bishop. In these statutes, concerning the vicars, articles 5 and 8 stipulate that, among the priests appointed to bury a deceased person, one of the two vicars must always be included. The turnus is overseen by the priest who keeps the register of the clergy of the city. This priest invites the priests, in turn, according to the number requested by the deceased's family.

SUMMARY OF THE FACTS. In the year 1843, in order to satisfy the wishes of the Archpriest Parochus, the Congregation permitted both vicars

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to participate together, whenever the priests of the Urbana Congregation were called to carry out burials. However, in order to better serve the salvation of souls, due to the increase in the population, in the year 1878 a third vicar was appointed, as the Bishop had requested, to whom was assigned one-third of the income that had previously been divided among the other vicars; for the parochial revenues are not sufficient to provide for the honest support of all. Therefore, the Parochus desired that this third vicar should be considered, in the association for the burial of the dead, in the same way as the other vicars.

[*Latin ed. p. 175*]

IURIS 175, while the Urban Congregation is present, the Archpriest appealed to the Apostolic See, explaining, in addition to the resolution of the doubts written at the bottom, that at least, for the sake of charity, vicars should always be preferred to others in the association for funerals. Disputation Summary. FROM THOSE THINGS WHICH SEEM TO FAVOR THE PAROCHIAL VICAR. And, above all, the following observations have been made in favor of the Parochial Vicar: Although, according to common law, it pertains to the heir to designate clerics to accompany the funeral, as Scarf, *Lucub.* can. vol. 3, lib. 4, tit. 14, no. 34 and following; Pignat. vol. 4, cons. 205, no. 36; Peyrin, ad Const. Leon. X, cap. 4, no. 7 state, nevertheless, unless otherwise stipulated by the testator, if the testator is silent, it was judged that this right belongs to the Parochial Vicar, as the Congregation testifies in Amostaz, *De causis piis*, lib. 6, cap. 2, no. 51, where it states: "The Congregation, in Ferrara, on September 7, 1613, judged that the Parochial Vicar may, at his discretion, call clerics to the funeral whom he wishes; nor is he obliged to call the nearest [vicars], unless otherwise stipulated by the heirs of the deceased, whose will must be observed." From this declaration, it is sufficiently clear that this faculty is granted to the Parochial Vicar, unless otherwise stipulated by the heirs of the deceased, to whom, above all, it pertains to designate the number of priests. But this right, in favor of the Parochial Vicar, is so firm that even the Statute of the Roman Clergy, which is usually considered law, under chapter 8, § 16, determines that this right belongs to one Parochial Vicar: "It pertains to one Parochial Vicar of the deceased to call priests, according to the number prefixed by the heirs themselves, to the funeral...." With this established, it would seem that the aforementioned Congregation cannot find any support in its own statutes, recognized by the authority of the Bishop, to exclude the Parochial Vicar from exercising this right in the absence of the heir, since it is not within the Bishop's power to decide this. And less so, based on a custom introduced to the contrary, "because it is contrary to natural law and to ecclesiastical freedom" (Curt., in cap. Cum tanto, no. 21), *De consuet.*. Therefore, if

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statutes and custom, from which...

[*Latin ed. p. 176*]

176 The aforementioned Congregation can only borrow the rights of parishes, but it does not sustain them; rather, it remains that, according to common law, the parish priest of the deceased comes to the aid of the testator or heir, who is not exercising this right. And this right, even though it pertains only subsidiarily to the parish priest, cannot be destroyed, neither by the authority of the Bishop, nor by contrary custom. For the Bishop cannot decree anything contrary to the law; and a custom derives its origin from the acquiescence of predecessors, which does not prejudice successors. And this custom is all the more to be disregarded because it is harmful to parochial rights; so that it should rather be considered an abuse and corruption, as stated in the Constitution of Pius IV, *In Principis Apostolorum Sede*. Therefore, with the statutes set aside and the alleged custom refuted, it would seem that the right to designate the clergy who are to perform the rites, who are to attend the funeral processions according to the number determined by the heir, belongs to the parish priest. With this principle established, it would as if superfluous to proceed further; but in the hypothetical case that the alleged rights of the Urban Congregation are to be upheld, in no way should vice-parishes, however many there may be, be excluded from intervening in any funeral outside of their turn. For the Doctors [theologians] teach, after the text in Canon, *Quia Sacerdotes*, question 1, that it is fitting that the clergy of the parish church should be preferred to outsiders in the association for funerals (Piton, loc. cit., n. 15; Pignatelli, loc. cit., n. 3). This disposition seems to have been followed by the Holy See in *Nullius Montis Cassini*, January 26, 1726, in response to question 9, in which it was judged that it is permissible for the heirs of the deceased to call only the parish priest (to the funeral), but that if they wish to call other priests, those of the parish church should be preferred, to the extent that this is pleasing to the heirs. The reason for which the Doctors grant this precedence to those priests of the parish church consists in the fact that this clergy serves the parish church. As Piton states, loc. cit., n. 14: "This precedence is founded in law, because the clergy serves the parish church by preaching, celebrating Masses, and performing divine services, and even by assisting the parish priest in administering the sacraments to the parishioners." Furthermore...

[*Latin ed. p. 177*]

Canon 177 pertains to the clergy of the parish when it comes to assisting at funerals, because the assistant priest is of service to the parish; I do not know how vicars, who bear the weight of the parish day and night, could be excluded. THOSE THINGS WHICH SEEM TO FAVOR THE URBAN CONGREGATION. On the other hand, it must be considered that in mat-

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ters of funerals, custom prevails, when it comes to those who ought to be present in them, as is stated after the Gloss on Clement. Indeed, Gratian, Disputations, book 4, chapter 492, number 7, teaches, with others, that the word "parochiales" and the verb "sepultur" are to be understood integrally. Furthermore, Pignatelli, in the aforementioned passage, number 39, testifies that this custom can only be introduced within a period of forty years: "it can be introduced by a custom of forty years, so that certain persons may be called to funerals, provided that it is not an impediment to free burial, as Gratian observes in this passage." However, the matter is not about a custom of forty years, but of a custom of more than a hundred years, so firmly established by the authority of so many bishops, that the very priest acting in the doubtful case lends credence to it. Therefore, if the custom favors the Congregation, and it is stipulated that a presbyter be designated by a certain person to assist at the funeral, it would seem that the parish priest could not reclaim this right for himself. It could be objected that this pertains to the right of the testator or heir, and therefore this custom cannot be introduced, as it would be an impediment to freedom. However, this is not the case, as it does not compel heirs to call upon the clergy for the funeral; in this case, it could be said to be an impediment to freedom, but rather it establishes the precedence of the clergy according to the ordinances and statutes established by the bishops, when the heirs wish to have the funeral arranged by others, and therefore it must be said to be the most reasonable, according to Pignatelli, in the aforementioned passage. It seems less likely that such a custom would harm the rights of the parish priest, which cannot be prescribed. It should be remembered here that many local customs are often considered by the Sacred Congregation, which, if properly introduced, prescribed, and approved, have the force of law, according to Reijfenst., book 2, Decretals, title 26, number 140, and the Sacred Congregation in Rome, March 24, 1821, §. This is also verified, even though the law resists the prescriber, provided that the acts have been performed frequently for forty years.

[*Latin ed. p. 178*]

178 The legal space with a title, or an unwritten custom, is supported by the text in chapter 1 on prescription, in 6, De Luca De beneficiis, book 3, section 1; Reiff, in the same place, number 121, 147, and 164; especially in the matter of funerals, where the greatest custom is usually observed, as is evident from Chapter Certificavi De sepulturis, Rota decisorum, 376, number 1, part 1, recently, and according to which, as can be seen in Fabrianen, Quartae funeralis, March 10 and April 7, 1731, and February 9, 1732, Camerinen, Sepulturae, December 18, 1819, and February 2. In the case, however, not only a custom of forty years with a title and frequent occurrences is present, but also its origin is repeated from the confirmation of the Bishop, who is the Parish Priest and Pastor of the entire Diocese, but

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of a prescription constantly observed and confirmed by a custom of more than centenaria years, which carries with it a better title from the world, by means of which all things are prescribed: Rota in decisorum, 962, coram Molines, number 31. From all of the above, it seems best to infer that the Congregation of Rome should maintain the practice of forming a register of priests for the association of the dead, and that the statutes of the year 1777 should remain in full force. After these things, it would seem unnecessary to inquire about the admission of vicars to funerals outside of the regular schedule. For since the statutes speak only of one vicar, this one, and no other, should be admitted. However, the act of the Congregation of the year 1843, at least for the admission of two vicars outside of the regular schedule, because at that time it was granted for personal reasons, which are now absent. Nor does it seem that this should be granted as a favor, because the right of a third would be violated, which the Pope does not intend to take away, nor can he do so without sin. Fagnan, in Chapter Consultationibus De Clericis aegrotis, number 50. For whoever takes away the right of another commits an injustice, chapter 1, 22, dist., and Gloss, ibidem in verse. It is said, "Injustice," and the Pope should not take away from one in order to give to another, unless there is a reason. But the reason seems to be absent in this case, since the vicars have wherewithal to live, and the clergy are in need.

[*Latin ed. p. 179*]

Having thus briefly considered these legal points, the following propositions were debated by the 9th Session of the Council of Trent (1551):

I. Whether it is lawful for a parish priest to call priests according to a number prescribed by the testator or heir, for the purpose of assisting at a burial. And concerning this, the answer is negative.

II. Whether one, or rather, all vicars should always be preferred to other priests in the association of priests at a burial, in such a case. And concerning this, the answer is negative to the first part, and affirmative to the second.

III. Whether the prayers of a chaplain should be permitted in such a case.

RESOLUTION. The Holy Congregation, after deliberation, responded on December 20, 1879: To I, negative. To II, negative to the first part, affirmative to the second. To III, provision is made in the preceding.

FROM WHICH WE MAY CONCLUDE:

I. That custom, as we have often noted, is a better title than worldly law; thus, it is reasonable to presume that an Apostolic decree would favor custom, even if it has not been formally approved.

II. That in matters concerning funerals, local customs often prevail; thus, if properly introduced, prescribed, and approved, they acquire the force of

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law.

III. That the note regarding custom in the decree of the Urban Congregation concerning the association of priests for burials, appears to be valid, provided that there is no lack of frequent practice, or of a memorable length of time, and that it does not seem to infringe upon the freedom of burial.

IV. That, according to the consensus of doctors, although certain rights, such as parochial rights, may resist prescription, nevertheless, if there is frequent practice and a very long period of time, these rights are extinguished, and the contrary custom becomes law.

V. Therefore, it may also be possible, by contrary custom, to extinguish the right of the parish priest to call priests to a funeral, both according to the number prescribed by the testator or heir, and also in the case where the testator or heir does not exercise this right.

[*Latin ed. p. 180*]

480. VI. The precedence of vicars in the association of the dead can, in some way, be founded in law and equity; and because they serve the parish church before others, by celebrating Masses, preaching the word of God, and administering the sacraments to the parishioners; so that with the pastor, they bear the weight of the day and the ardor. VII. Hence, although the Sacred Congregation of the Council has resolved that, contrary to custom, the favor of the confraternity should be observed, the right of the pastor to call priests to associate with the dead was considered; nevertheless, vicars and all others should always be preferred in the association of the dead. CANON. On December 20, 1879, a canon was introduced in the Diocese A, requiring each pastor annually to pay a small sum for the purchase of materials for the holy oils and for compensating the ministers who distribute them. This canon currently does not exceed 35 cents for each parish. Recently, there has been doubt as to whether this small tax can legitimately be imposed; therefore, to remove all doubt on this matter, the Ordinary himself, having offered a supplication to the Sacred Congregation of the Council, declared that he wished to know whether this tax could safely be imposed; and, if not, to abolish the custom and declare it void from the time it was enacted. COMPENDIUM OF THE MATTER. A sympathetic discussion. FROM WHAT FAVORS THE CUSTOM. The affirmative opinion seems to be the one to follow, if one considers, without the taint of simony, that something can be demanded for the material or labor. Thus, just as consecrated vessels used for divine services can be sold without harm, as all hold, so by parity of reason, something can be demanded for...

[*Latin ed. p. 181*]

It would seem necessary to procure the materials for the sacred oils, since these are things that can be valued and traded among men. However, it is granted, and scarcely denied, that this canon does not apply to the Bishop,

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either before or after consecration. Nevertheless, the imposition of a charge seems permissible, given the small quantity of material required, and this would also excuse the case of Simony, as Pirhing states in *lib. 5. tit. 3. de Simonia*. However, all is undone if one considers the unforgettable custom that favors the Bishops. For it must be noted that the sale of sacred oils has been prohibited by canon law only according to their physical nature, as Scavini states in *Theol. Moral, tract. De Simonia, num. 182*, where, in answering the question, "In how many ways is human Simony committed?", he writes: "By selling blessed oil or sacred chrism, even according to its physical nature." However, any ecclesiastical law can be destroyed by an unforgettable custom, since it creates a presumption of law, and by law, a better claim of any kind from the world, *this title itself not excepted*, so that, contrary to this presumption, this title cannot be admitted unless it is proven, as Menoch states in *lib. 3. praesumpt. 131, num. 50*, and Piton in *De controv. Patron, alleg. 59, num. 47*. And in the matter of ecclesiastical Simony, this is taught by Francés in *De Eccl. Cath., cap. 16, num. 97 seq.*: "For those things which do not constitute Simony according to natural or divine law, but according to ecclesiastical positive law, can undoubtedly be abolished by contrary custom..." Even more so, because this custom should be considered not unreasonable, since something can be demanded by the force of custom for the chrism or the holy oil in consecrations, as D. Thomas teaches in 2-2 q. 100 §. 2: "Among some, it is customary that something is given to the Bishop for the chrism or the holy oil in consecrations... and therefore, if something is demanded as a price for the sacred thing, it is manifestly Simony; but if it is demanded as certain stipends approved by custom, it is not Simony." And further above, "To receive something for the support of those who administer the sacraments is not Simony." Therefore, according to St. Do.

[*Latin ed. p. 182*]

182 The canon law allows, by custom, that something may be received in place of the sacred oil, provided that it is not given as a price for a spiritual benefit. It is not surprising that Semini, in the aforementioned passage, testifies that this custom prevails not only in the Diocese of A., but also in others, and dares to condemn it, stating: "However, this custom has prevailed in some cathedral churches, whereby something is received from particular churches to compensate for the expenses incurred in procuring the material." On the contrary, it must be noted that demanding something for the sacred oils is condemned by canon law. Thus, in the Council of Barcelona, under Reccared, canon 2 states: "When the chrism is given to the diocesan priests for the confirmation of neophytes, nothing should be received for the price of the liquid." In the Council of Chalons-sur-Saône, canon 16 states: "Some brothers said that it was an ancient custom in their churches that the priests should give two or four denarii for the balsam

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used in making the chrism, or for the lights used in the church. Therefore, we all decreed that, just as nothing should be received for the offering of basilicas or for the granting of orders, so also nothing should be received from the priests for the balsam or for the lights purchased for the chrism." In the Council of Oxford, canon 21, the Fathers judged it absurd that something should be demanded for the chrism, or for the oil, when this has been so often prohibited. In a similar manner, the Council of Barcelona, canon 2, the Council of Melde, canon 45, the Council of Aix-la-Chapelle, 2nd part, chapter 5, and the Council of Emerita, canon 9, all state the same.

THINGS OPPOSED TO CUSTOM.

The most wise Popes have consistently adhered to these dispositions, and have especially striven to eradicate any customs and tergiversations that have arisen concerning this matter, ordering that no money should be demanded from churches for the chrism, even if this has a custom to that effect. Let Innocent be heard in chapter 16, "On Simony": "Those things which spring from the root of avarice and cupidity, and which burst forth in the form of simoniacal wickedness, must be utterly eradicated... We have heard that coins are extorted for the chrism, which are now sometimes called a 'cathedral offering,' sometimes a 'Paschal offering,' and sometimes an 'episcopal custom.' Because this is known to be simoniacal, we command..."

[*Latin ed. p. 183*]

CANON 183: "We decree that, under the pretext of some custom, or the prescriptions of a prelate, no tenths whatsoever shall be exacted, lest anyone should presume to do this, and thus, not undeservedly, should fear the peril to order and dignity." Consequently, Gonzalez, in his Commentary on this canon, calls the custom of demanding something for expenses incurred in oil and balsam "corruptela," and resolves that, properly speaking, simony is present in this case, contrary to Gibelin. Similarly, Pirhing, *lib.* 5, title 3, section 2, § 4, number 36, in reference to this canon, notes that not only is it forbidden to demand money for the Chrism, but also for the very liquid Chrism itself, or the consecrated oil and balsam—as is more clearly stated in canon. *Placuit* 102, causes i, question 1. "Notwithstanding contrary custom, which is not valid in matters that are inherently evil and prohibited, it does not excuse the evil, but rather accuses it," *glossa* on the word "custom." Barbosa, *De officio et potestate Episcopi*, allegation 31, number 21, concurs. Benedict XIV, *De Synodo Dioec.* I, 5, chapter 7, number 10, narrates that a certain Maronite Patriarch of Antioch, who distributed the sacred oil, was accustomed to demand an offering of money, which he used for his sustenance and for the expenses incumbent upon him in his patriarchal office. He states: "Although it was established that

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money should neither be given nor received with the intention of selling the sacred oil, nevertheless, in order to remove all suspicion of simony, this custom was disapproved by the particular Congregation, to which the matters pertaining to the Maronites were referred, and its judgment was confirmed by us." The example drawn from the sale of the consecrated chalice is not applicable. For in consecrated vessels, the consecration is not mixed with the silver or gold, but only with the form of the vessel, and therefore, when the form is removed, the consecration vanishes. As Sylvester states in *Summa*, on the word "chalice"; and just as silver and gold are separable from the consecration, so the sale of these does not induce simony. Otherwise, the matter is different in our case, because once the oil has been consecrated, the consecration adheres to the substance, and cannot be removed, as Cajetan noted.

[*Latin ed. p. 184*]

184. Canon 5, in question 22, article 88, paragraph 11, and following; Navarras, in his treatise *De Spoliis*, section 1, number 8; Suarez, book 4, chapter 14, part 1, concerning Religion, concerning "simony." "Indeed, there are certain matters which, without regard to the artificial form, are consecrated as if in their own substance, and concerning these, they say that they cannot be sold, because of the matter itself..." And this opinion seems to be indicated by the Glossa, in the dictionary, concerning canon 102, "in chapter *ea quae* and chapter *non satis De simonia*." With these things noted, the following doubts are to be resolved.

I. Whether, in this case, the custom of demanding an annual canon can be maintained? And, to the extent that it is negative.

II. Whether absolution should be granted in this case?

RESOLUTION. The Sacred Congregation of the Council, after deliberation, on December 20, 1879, decided to respond:

To I. The custom can be tolerated.

To II. Provision is made.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. Since Doctors, Roman Pontiffs, and Councils have generally condemned receiving something for chrism or oil; hence, it often happens that, through sacred constitutions, the custom of demanding something for expenses incurred in oil or balsam is condemned.

II. However, it seems that those things which do not induce simony by natural or divine law, but only by ecclesiastical positive law, can be abrogated by a contrary custom, which is reasonable and legitimately prescribed.

III. The moderate canon, of which we speak, seems to be purged of the

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stain of simony, both by its smallness, and because it is prohibited only by canon law, against which a contrary, already customary, practice exists.

IV. To demand a certain sum as a stipend by custom is approved.

[*Latin ed. p. 185*]

CANON 5. To avoid the appearance of simony, it must be ensured that payments are not demanded as a price for spiritual matters, but only in consideration of the material costs and labor involved (1). (1) It is not hidden from us that money has great power, which is necessary for compensating the ministers who distribute the sacred oils, due to the distance and harshness of the places, where the custom of receiving a small fee is unusual. These expenses should be borne by the Bishop, who is now deprived of the sacred patrimony due to the governance.

SPONSALIA. On January 31, 1880. SUMMARY OF FACTS. Charles III, King of Spain, on April 28, 1803, issued a Pragmatic decree, by which he ordered that no judge or tribunal of any jurisdiction should admit a petition for impediment to marriage, for the purpose of contracting a marriage, unless it was supported by public documentation. The Spanish Church, albeit reluctantly, and with the opposition of some Bishops, accepted the Carolinian decree from the beginning, consistently and universally observing it; thus, it acquired the force of customary law, canonical discipline, and ecclesiastical sanction, and in the present day, it retains its force. It should also be remembered that the practice of initiating and completing a process before the Episcopal court, to which a public notary, both ecclesiastical and civil, subscribes, also remains in force, whenever it is a matter of obtaining a dispensation from the Apostolic See regarding any public impediment. With these things stated, it is fitting to describe the manner of the case. Agapitus Augustine and Mary Theresa of the diocese obtained a dispensation from the Most Holy Prince for the third degree of consanguinity, in order to contract marriage. Regarding this matter, the Vicar Capitular, after again confirming and ratifying the prayers of the Orators, and after three announcements were read in the parish church, as prescribed by the Council of Trent, issued the marriage license in writing, without any impediment. This kind of permission was not immediately demanded, provided that the father of the girl was...

[*Latin ed. p. 186*]

486. The betrothal lasted for two months. Meanwhile, Agapitus and Maria, having previously entered into a mutual agreement, strengthened and reaffirmed their betrothal, and Agapitus presented the young woman with various gifts, which she accepted with a willing heart. However, their mutual promise lacked public record, according to the Carolingian law. A question arose between the father of Maria and the guardian of Agapitus, and the father forbade his daughter from celebrating the

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marriage with Agapitus altogether. Indeed, after some time, the father agreed to another young man who sought Maria's hand, and promised her to him in marriage. This news scarcely reached Agapitus, and he immediately appealed to the Bishop, through the parish priest, presenting the mutual promise, or betrothal, that had been made. The question was debated by several canonists and theologians in Hispaniae, and was resolved in different ways due to the lack of written documentation; therefore, the parish priest considered it necessary to seek clarification from the Sacred Congregation of the Council, to which he submitted the matter.

(1) A summary of the arguments.

THOSE THINGS WHICH SUGGEST THAT THE BETROTHAL IS INVALID.

It appears that the impediment to the betrothal should be considered null and void in this case, based on the practice in the Kingdom of Hispaniae, where betrothals are considered valid and binding only when they have been legally recorded in writing, according to article 18, paragraph 2, of book 10 of the Novissima Recapitulatio. There, it states: "In no ecclesiastical or civil tribunal, nor in any secular court within my domains, will petitions concerning betrothals be admitted unless they have been promised by public record." Furthermore, the betrothal in question, lacking public record and legal confirmation, is like a stream without a bed, and should be considered null and void, according to the well-known legal maxim: "That which is contrary to the law must be considered as if it had never been."

(1) Note that the Sacred Congregation of the Council did not respond to the specific questions, because the necessary parties were not present to provide a direct answer; rather, the parish priest simply proposed a doubt, after Spanish canonists and theologians had already expressed differing opinions. Therefore, general questions were proposed for clarification regarding betrothals in relation to the Carolingian law in the Kingdom of Hispaniae, taking advantage of this opportunity.

[*Latin ed. p. 187*]

SPONSALIA 187: Question C. Concerning the pragmatic sanction of this law in the Kingdom of Spain, it cannot be doubted that it has the force of law, since the bishop affirms that it is still observed. Furthermore, that the Carolingian pragmatic sanction is included among the laws by which Spain is now governed, is sufficient evidence from La Fuente, who in his work *Eccl. Discept.*, part 9, lecture 96, at the end, writes: "He [La Fuente] did this so that almost all would unanimously submit to the law, and although it was harsh and not very consonant with ecclesiastical discipline, no one objected to it, and it has been observed without hesitation by all this age

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among us." Furthermore, the information received from the Apostolic Nunciature confirms that this pragmatic sanction has been admitted from the beginning, constantly and universally observed; therefore, it has acquired the force of customary law, canonical discipline, and ecclesiastical sanction. It is certain that custom has the force of law, provided that it is supported by the necessary requirements among all. These requirements are: that it be reasonable and legitimately established, as stated in the final chapter on custom. Regarding the reasonableness of custom, it can be seen that it is beneficial to the public good; namely, to prevent young men and women of both sexes in Spain from being too easily and readily disposed to celebrate marriages with many others, from which facility a source of scandals and disputes often arises, as the Apostolic Nuncius reports. It is said to be legitimately established when, after the lapse of time, it has been obtained and strengthened in accordance with the requirements of law, similar to prescription, as stated in Reiffenst. *lib. 1. decret., tit. 4, §. 2, n. 34; indeed, the length of time required for a custom to be valid against the law is 40 years, as stated in Devoti *Instit. Canon., lib. 1, Cap. 2, §. 50; and in this matter, it has been discovered that it is not about 40 years, but about 80 years of custom. Therefore, it is clear that the marriages, about which the question is, cannot be valid, because they were instituted in opposition to both written law and custom legitimately established. However, it does not seem possible to object to the Carolingian pragmatic sanction, which prescribes a public record in marriages.

[*Latin ed. p. 188*]

188 The marriage had been completed through a process for obtaining a dispensation from the impediment of third-degree consanguinity, carried out by the Ecclesiastical Court with the assistance of a Notary. In any matter, it must be carefully examined what has been done, so as to always conform to the text of the law, as stated in the stipulation 38 of Isaias, concerning the rights of kings, chapter 2, number 4. Indeed, this process, carried out by order of the court, aimed at obtaining a dispensation from the impediment of consanguinity, and certainly not at securing a mutual promise of marriage. Therefore, since the process initiated by the Episcopal Court has a different objective than that which Carolina had in mind, it naturally follows that it cannot be concluded that the dispensation process leads to a stipulation of marriage. Furthermore, it would not be proper to consider the court's process as equivalent to the repeated pragmatics of Carolina, simply because through it, the difficulties of the marriage are increased, which was not the objective that Carolina's law had set for itself. This deduction can only be derived from an interpretation. Moreover, it is the canon law of both jurisdictions that, where the two are equally clear, the interpretation in the law only has a place in cases of doubt. However, since the words of the pragmatic cited above clearly indicate that we are

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dealing with a clear law, it follows that any interpretation must be rejected.

THOSE THINGS WHICH INDICATE THAT THE MARRIAGE IS VALID. On the one hand, it appears that these marriages should be considered valid, because their essence consists in the mutual promise of both parties, according to the text in L. 1 ff. concerning marriages: "a promise of future marriages"; which is consistent with Canon "Nostrates, 30, question 5"; and for this to be established, nothing more is required than that the parties have placed their mutual faith in entering into marriage, as stated in the decision of the Rota, 572, number 3, in the proceedings of March 2, 1744, before Caprara. Indeed, there is no doubt about the promise of Mary; it is clear that there were reciprocal obligations between the parents of both parties, preliminary discussions, and all the agreements by which the future well-being of the spouses was considered; the dispensation requested from the Roman Pontiff regarding the third degree of consanguinity, the three publications read in the parish church, the gifts offered to the bride.

[*Latin ed. p. 189*]

After the marriage ceremonies and other formalities have been completed, and it is evident that the consent of the contracting parties, approved by their respective parents, is present and sufficient, it becomes even more clear that the marriage possesses all the necessary perfections, as the Glossa in Cap. Si inter 31, where it says "of marriages and betrothals," and in Cap. Litteras 4, where it says "It is pleasing" concerning betrothals of minors, affirms, citing the decision of the Rota before Buratto, no. 143, n. 34, and the Novarien Sponsal. of July 1, 1693, §, before Muto. However, the Apostolic See has declared the Carolingian Pragmatic to be utterly devoid of any authority or validity, as it is contrary to the authority of the Church in matters of marriage. Therefore, it is in vain that some Spanish Doctors strive to demonstrate the nullity of marriages in cases where public record is lacking. Nor does it matter that the Church of Spain, at least in the external forum, has accepted this Pragmatic as law. For it is clear that this law was introduced into the region of Spain by force and against the will of many Bishops, as the Bishop notes. But it also seems reasonable that a custom that has persisted since the year 1803 in the Kingdom of Spain should not be held in high regard. Indeed, when such a custom is contrary to the decrees of the Council of Trent, it necessarily falls under the censure of the Constitution of His Holiness Pope Pius IV, *In Principis Apostolorum*, which declares any custom that is contrary to the decrees of the Council of Trent to be null and void, as an abuse and a corruption of the law. The Sacred Congregation of the Council, in the case of the Servitium Chori in Nuceria Paganorum, on August 25, 1877, affirmed this. And this Constitution, as wisely noted by Benedict XIV in *Instit. Eccl.* 60, n. 7, "embraces all the chapters of the same Council together, and does

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not render any custom of importance that is contrary to the laws written in those same chapters." For each chapter has an attached decree that is invalidating, which not only destroys existing customs, but also prevents new ones from arising, due to the lack of tacit consent of the Supreme Pontiff, who is never presumed to exist in matters that are contrary to Constitutions protected by a clause of invalidation, as taught by De Luca in *De Iurisdict.*, disc. 95, n. 7 and 8, and by Pignatelli in *Consult.* 134, no. 16, vol. i.

[*Latin ed. p. 190*]

190 Regarding Marriages, Piton, in *De Controv. Patr. all.*, book 5, number 1; *Eccl. Dis.*, book 23, number 16 and following; book 112, number 29; Ferraris, *V. Consuetudo*, number 3, 7. Having considered all these matters, and since it is evident that neither the Carolinian law nor the custom derived from it can stand, it necessarily follows that already begun marriages, if just and valid, must be maintained. However, even admitting that both the Carolinian law and the custom should remain in force, it does not follow that marriages, lacking any validity, can be nullified. For everyone knows the reason for enacting a law, and the intention of the legislators must always be considered (*L. nominis et rei*, ff. *de verb. signifie*); for the intention is the soul of the law itself, and where the intention is present, there the disposition of the law prevails. The intention and final cause for which the Carolinian law provides that courts should not admit petitions for marriage of those who have a public record of prior betrothals, was 'that marriages should not be easily impeded on account of previous betrothals without serious deliberation.' But whenever this evil is provided for, the intention and final cause of the law are satisfied, and consequently, the disposition is fulfilled. The process carried out in the Episcopal court to obtain a dispensation regarding the third degree of consanguinity removes the cause for impeding the marriage; indeed, it demonstrates more and more the serious and deliberate will of the contracting parties, because it was completed by the Major Notary, and before the same Ecclesiastical Notary, as well as the civil Official, the betrothal already celebrated was ratified and approved. Therefore, obedience to the Carolinian law is no less required of the contracting parties than if the betrothal had been celebrated in the beginning before a public Notary. Since, from what has been discussed, it is clear that the contract of betrothal has been fully completed, it is evident that Mary must be compelled to enter into marriage with Agapito through words in the present tense. For nothing is more in accordance with human faith than that agreements should be kept (*L. i ff. de pactis*, chapter 1, 2, and the same title); indeed, the obligation of betrothal does not proceed solely from the virtue of fidelity, but from commutative justice. Furthermore, the dissent of the father is considered null and void (*u r*); moreover,

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any levity on the part of parents towards their children is reprehensible.

[*Latin ed. p. 191*]

Alexander III, in chapter 191 of book 2 of his work "De Sponsalibus," condemns those who, through a false understanding of faith, raise objections. After considering all these matters, the intention of the Most Holy Fathers was to resolve the following doubts.

I. Are marriages contracted in Spain without public record valid? And, to the extent that the answer is negative,

II. Can an instrument drawn up in the Curia for a dispensation regarding some impediment supplement public record?

RESOLUTION. The Sacred Congregation, after careful consideration on January 31st, decided that the following should be answered: To the first and second questions, negatively.

FROM WHICH WE MAY GATHER:

I. Marriages contracted in Spain without public record, according to the Pragmatic Sanction of Charles, are not to be declared null.

II. For the maxim of law states that what is done contrary to law is to be considered void.

III. It seems that the Pragmatic Sanction of Charles has the force of law, because, as if acquired through customary law, it has obtained the approval of canon law and the force of ecclesiastical sanction.

(1) (1) It should be known to kings who enact laws, having as their object disciplinary matters, and especially the sanctions and impediments of marriage, what Natalis Alexander noted concerning Justinian: "If Justinion introduced new laws concerning ecclesiastical discipline, they had no force whatsoever, unless they were received and approved by the Church." *Hist. eccl. Sect. VI cap. 7 art. 2 §*.

For political authority should only be granted the same authority in matters of marriage as is granted in civil affairs; namely, that the civil government can establish and sanction those things which contribute to the common good, and which are contained within the limits of temporal effects. For marriage, insofar as it pertains to the office of nature, is established by the law of nature; insofar as it pertains to the office of community, it is established by civil law; and insofar as it is a sacrament, it is established by divine law. *Doctor Angelicus in Quarto Sent. dist. 3é art. 2 q. 1 n ad 4*.

From this, it is understood that civil authority has no power in the sacrament of marriage, nor in the betrothals which can be referred to marriage.

However, it must also be noted that, although the Council of Trent did

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not...

[*Latin ed. p. 192*]

192 IV. Concerning Marriages. That a custom may gain the strength of a law, and may be able to abrogate any law, it ought to be reasonable and legitimately prescribed. V. The law in question, although it may seem somewhat inconsistent with ecclesiastical discipline, does not lack reason; forasmuch as it seeks to eliminate disputes and scandals, and it does not lack legitimate prescription, inasmuch as it has been strengthened by a period of almost 80 years. IV. Since the Caroline Pragmatic is conceived in clear terms, it admits of no interpretation in this regard; therefore, it cannot be supplemented by an instrument that is commonly used in the Episcopal court for a dispensation concerning some impediment. However, the form for contracting marriages through words of the future is most fitting for ecclesiastical discipline, so that this mutual promise may be made seriously, and not through words that have been uttered only with some impulse of love. Now, it seems undeniable that, among all Spaniards, after the Caroline Pragmatic, the opinion has prevailed that marriages are not considered to be seriously entered into unless they are confirmed by a public record. Perhaps, considering these reasons, the Sacred Congregation [of the Holy Office] judged that this same nation could follow a determined form for the validity of marriages, even though this form was introduced by civil authority.

[*Latin ed. p. 193*]

493 BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO XIII, PAPA, A LETTER TO HIPPOLYTUS, SACERDOTAL CARDINAL, GUIBERT, ARCHBISHOP OF PARISIENSEM. To our beloved Son Hippolytus, Sacred Cardinal Priest, Guibert, Archbishop of PARISIENSEM, greetings and the apostolic blessing of LEO XIII. BELOVED SON, We have gladly read the letters which you, our beloved Son, recently sent to the Head of the Republic, to the Prefect of the Council for the Administration of Public Affairs, and indeed to the Prefect of Internal Affairs of GALLIAE, concerning the decrees made on the 29th of March against the colleges of religious confraternities, in which, as it were, the legitimate rights of the confraternities are not upheld. Indeed, in those letters, there is a commendation of your constancy, joined with extraordinary charity: for you freely and peacefully demonstrate that wherever the liberty of the Catholic Church is established, there the religious orders spontaneously flourish; for they exist as if from a certain stock, and as if they are born from the Church itself; and they are, moreover, auxiliary forces, especially necessary in these times, whose prudence and industry Bishops can profitably and usefully employ, both in the performance of sacred duties and in the care of Christians in need. And you also rightly show among

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other things that there is no form of government to which religious confraternities are opposed or repugnant; rather, the public tranquility greatly benefits from the fact that so many innocent citizens can live peacefully and quietly; and it is certainly not in the best interests of the people to appear to be hostile to religion, which is common.

[*Latin ed. p. 194*]

194. The letter [from the bishops] is a warning: to depart from, and to pursue with hostility, the Catholic faith inherited from ancestors and forefathers. The other Bishops of Galliae shared the same opinion regarding these grievous decrees, and rendered the same judgment. All of them, with great praise for their fortitude and moderation, publicly and diligently supported the religious orders, understanding that they were fulfilling a just and proper duty; for they know that the magnitude of the evils is immense, and that not only will the Church suffer, but also Galliae will face a grave calamity, an injustice to free citizens, and a detriment to public tranquility. And indeed, these outstanding men, whom the laws have pleased to sharpen with their force, were both born and nurtured by the Church itself, with every excellence of virtue and humanity. And civil society owes them much, not only because they have accustomed the minds of the multitude to do what is right through the sanctity of their morals, and because they have illuminated sacred and profane disciplines with the abundance of their teachings; but also because they have enriched the patrimony of all the best arts with the fruits of their own genius. And in times when there was a great shortage of clergy, bands of sacred workers, distinguished by wisdom and diligence, emerged from the monasteries, who assisted the Bishops in cultivating piety in souls, in spreading the evangelical doctrine, and in educating youth in letters and good morals. Moreover, the religious houses in Galliae have always contributed the largest number of men sent to the barbarian peoples, for the cause of the Gospel; who, with great labors undertaken for the Catholic faith, together with the Christian Gospel, have carried the name and glory of the Gauls to distant lands. — There is scarcely any kind of misfortune in human affairs that religious men have not sought to alleviate, no calamity in which their name is invoked, to which they have not diligently sought to apply a timely remedy, in hospitals, in houses for receiving the poor, in the peace and tranquility of cities, in the midst of the turmoil and fury of wars; and this with such gentleness and mercy, which can only arise from divine charity. The most noble examples and excellent fruits of this charity are visible in all provinces, cities, and towns.

[*Latin ed. p. 195*]

LETTER 195. Such a commendation of so many merits, strengthened by the unanimous testimony of Bishops, seemed to possess sufficient power to prevent the intended destruction; especially since the citizens of Galliae,

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from all ranks, deeply moved by the present attack on the sacred orders, were eager to demonstrate their willingness, through honest competition of obedience and benevolence. And not a few, preferring a memorable example of fortitude, chose to withdraw from office and renounce public duties, rather than to offer themselves as helpers in the destruction, or to appear as supporters of those decrees which inflicted a grievous wound upon the citizens' liberty, long recognized and customary. But to the most noble voices of the Bishops and the complaints of Catholics, ears were closed by a poorly conceived plan. Indeed, it was shrewdly conjectured that religious societies would not escape destruction, even if they requested the legitimate rights of societies; for it did not seem, by clear signs of things and of minds, that the intention of abolishing the sacred orders had not already taken root; and therefore, it was deemed fitting by unanimous judgment to abstain from prayer; all the more so because other causes were not lacking which persuaded them to do so. Thus, on the appointed day, with force applied, the first decree was put into effect, by which it was decreed that the Society of Jesus be dissolved throughout Galliae. — Because of this, We ordered Our Legate residing in Parisiis to immediately present Our complaints to the administrators of the republic, and also to demonstrate that there was nothing comparable to the merits of so many virtuous men; whose charity, doctrine, and care, placed with the utmost diligence and perspicacious prudence, especially in the education of youth, this Apostolic See has long known, and indeed, does much. And to their virtue, the people of Galliae bear witness, when they readily and with full confidence commend their young sons, their most beloved treasures, to their discipline and integrity. But when the complaints published by Our Legate had yielded no results, We were already at the point of raising Our apostolic voice, by reason of Our office and power, against those things which were being done to the detriment of the sacred orders, and which would be done in the future. — Then it was signified to Us that it was possible to...

[*Latin ed. p. 196*]

196. The writing of the letter was abandoned, provided that the religious members, having received the letter on this matter, declared that they were detached from the movements and changes of public affairs, and that they had not deviated from the studies proper to their order. Many and weighty reasons persuaded Us to accept, of Our own accord, the condition offered by them, which, besides not being in accordance with Catholic doctrines, nor contrary to the dignity of religious orders, also had the advantage that it seemed to be able to avert a very great harm from France, or at least to wrest from the hands of the enemies a certain weapon, which they had often used to harm the religious members. It has been perceived and explored by Us and by this Apostolic See, what purpose is served by the religious congregations in the Catholic Church: namely, to foster perfection and the growth

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of virtue in the members themselves; and that in their external actions, and in those proper to each individual, they aim at nothing other than either the eternal salvation of their neighbors, or the alleviation of the miseries of the human race; in which they strive with wonderful zeal and daily diligence. Undoubtedly, the Catholic Church condemns and disapproves of no form of government; and those things which are instituted by the Church for the common good can prosper, whether the republic is governed by one person or by many, provided that justice and order prevail. However, the Apostolic See, which must conduct public affairs in various circumstances and vicissitudes, must deal with those who govern, and it looks only to the preservation of the Christian faith; it does not wish, nor can it wish, to infringe upon the rights of the empire, whatever they may be. However, obedience must be given to those who govern, for the sake of maintaining order, in which the foundation of public safety lies; in this, no one doubts. Nevertheless, it does not follow that, by obeying, one approves of anything that may be unjust in the constitution or administration of the state. Since these are the common precepts of public law for Catholic people, there was nothing to prevent the declaration of such sentiments. And therefore, there is some reason for wonder that this carefully considered plan, undertaken for the sake of the Christian and civil cause, was deemed to be unfair by some.

[*Latin ed. p. 197*]

LETTER 197. The laity and judges have offended men with probable things, which they diligently and ingeniously develop in defending the Catholic religion. In order to properly assess the matter, it was sufficient to know that what was sought was a declaration made with authority, or by exhortation, or at least by the consent of the Bishops. For it is the duty of the Bishops to preside over and govern the matters pertaining to the Catholic religion, whom the Holy Spirit has placed to govern the Church of God; and it is clear that others ought to be subject to them and obey them. Therefore, the declaration sought appeared less alarming to religious families.

However, it is most regrettable that the governors of the Galliae public affairs have persisted in what they had begun; and now, from there, we receive daily harsh and sad news; and other families of religious orders have begun to be dispersed and called to ruin. We are deeply saddened and greatly distressed by this new development, which Galliae is already experiencing; and we deplore and detest the injustice that is being inflicted upon the Catholic Church.

Meanwhile, as war rages fiercely and more serious conflicts are not far off, it is our duty to preserve, everywhere, the steadfast stability of the institutions of the Church, and to defend, with a firm and elevated spirit, the rights that have been entrusted to our faith.

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In this matter, we are entirely confident that neither your efforts, beloved son, nor those of other venerable brothers, will be lacking, who never cease to testify to their devotion to us and their excellent will in every way. Therefore, with your help, and with God's assistance, we shall achieve that admirable union, born of faith and charity, by which Christian peoples, all Bishops, and the supreme Pastor of the Church must be united.

Encouraged by this hope, to you, beloved son, and to the venerable Bishops of Galliae, we commend your care, and as a pledge of our special benevolence, we impart the Apostolic Blessing with all our heart.

Given at Rome, at St. Peter's, on the 22nd day of October, in the year 1837, in the third year of Our Pontificate.

LEO XIII, POPE.

[*Latin ed. p. 198*]

£98 THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO XIII, PAPA XIII, ADDRESS GIVEN ON DECEMBER 13, 1880, TO THE CARDINALS OF THE HOLY ROMAN CHURCH IN THE VATICAN.

Venerable Brothers: If there has been any time in the Christian cause that was difficult and full of labors, this certainly is it, since in many parts of Europe we see the Church afflicted by the most grievous injuries, and by such varied and numerous ones, that almost every hour she must contend for her freedom, for her rights, for her dignity. Indeed, as the audacity of evil grows everywhere, the majesty of the divine religion is contemned, Catholic institutions are violated, and unjust laws are enacted, with a manifest discrimination against the faith and the salvation of souls. For this reason, if all who are lovers of the Catholic name have just cause to be moved by the present circumstances or by the dangers and inconveniences, We are much more deeply grieved, and We endure a certain profound sorrow.

Nevertheless, it pleases Us today to divert our mind for a time from the distress of these things, and rather to turn it to that place from which We see some solace offered to Us; We mean the Eastern Churches, of which We have spoken to you at times when the occasion demanded. For in this vast place, there are particular concerns that We have remembered, which We hastened to address to the peoples of the East at the very beginning of Our pontificate. And We did this gladly, not only because it was necessary to meet their needs promptly, but also because, by the divine...

[*Latin ed. p. 199*]

ADDRESS 199. By the grace of Providence, it seems that minds are inclined to turn towards the center of Catholic truth. We, indeed, are certainly delighted by the ancient glory of the East, and by the very memory of

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the merits of men, which is renowned among all classes of people. For there are the cradles of the human race, and the beginnings of Christian wisdom; from there flowed, like an abundant river, all the benefits which we have received together with the sacred Gospel, into the West. And it is not a fleeting praise that is given to the great men of the East, to whom it happened that, inspired by the auspices of Catholic truth, they strived for all excellence, and through sanctity, doctrine, and deeds, spread the glory of their name to posterity. And these things, Venerable Brothers, being considered by us, we desire and hope for nothing so much as to contribute to the revival of the virtues and greatness of our ancestors throughout the East. And even more, because the course of human events there is such that indications repeatedly appear which portend hope, that the peoples of the East, who have been separated from the bosom of the Roman Church for so long a time, will one day, by the grace of God, return to it. Therefore, since it is certain to us that we must diligently, as far as we can, pursue this endeavor, we have long been considering by what means we might offer a special testimony of our paternal benevolence to all the peoples of the East. Now, having found a suitable opportunity, as we had hoped, we testify to our benevolent spirit, with public and equally distinguished significance, by the undertaking of the plan to co-opt into your most esteemed College, Venerable Brothers, one of the Bishops of the East, distinguished by outstanding virtues: by which we wish to please not only him, but all. You are not unaware, Venerable Brothers, that those of the Armenian nation who had recently separated from this Apostolic See have repented of their actions, and, through the benignity of the divine power, have returned from where they had strayed. Indeed, in all this work of reconciliation, our Venerable Brother Anthony Hassan has shown us great industry, charity, and prudence. He is, indeed, an outstanding man; it is pleasing to us, and worthy of mention, that as a young man, he was educated in Rome in the liberal arts and in more serious disciplines.

[*Latin ed. p. 200*]

200. The discourse [addressed] to the East [and] was carried to that region, where the first Archbishop, and afterwards the Patriarch of the Armenians of Cilicia, was appointed. Therefore, for almost forty years, he wisely and faithfully discharged the pontifical office. Having given a great example of patience and fortitude in defending the rights of his people and in upholding the doctrine of the Church, when faced with their secession. But in this, as there are many ornaments of virtue, so especially does unwavering faith towards this Apostolic See shine forth, as well as a certain zeal of love and singular devotion. Therefore, Venerable Brothers, we have judged him worthy, through whom we might restore to the Eastern Churches the Roman splendor of the purple, after a long interval following Bessarion. May God grant that the dignity conferred upon this most distin-

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guished man may be propitious and blessed for the entire Catholic cause: and, in particular, may it be beneficial to the East, so that all who retain the Catholic profession may understand that they are honored in this one man, and may receive encouragement to faithfully preserve the ancestral faith; and that others may recognize and love Our will, and may receive this as a pledge of the greatest blessings, which We, if ever We should be moved to associate Christian faith and charity with this blessed See of the Prince of the Apostles, Peter, promise to them in the name and authority of God. For the greater glory of God and the benefit of the Church, in addition to this man, whom We have mentioned above, We designate three other outstanding men as Cardinals of the Holy Roman Church, whom, however, for just reasons, We reserve in Our heart. What do you think? Therefore, by the authority of the Almighty God, and of the Holy Apostles Peter and Paul, and by Our own authority, We create ANTONIUM HASSUN as Cardinal Priest of the Holy Roman Church. We also create the three others, whom We have indicated above, as Cardinals, to be made known at Our discretion, with the necessary and appropriate dispensations, derogations, and clauses. In the name of the Father, and of the Son, and of the Holy Spirit. Amen.

[*Latin ed. p. 201*]

201 FROM THE HOLY CONGREGATION OF THE COUNCIL, INDULGENCE, July 26, 1879. Through a summary of petitions, a COMPENDIUM OF FACTS. Among other rights pertaining to the V. family, the right of patronage of the Priory under the invocation of Saints Martin and Julian is recorded. This right of patronage, it is stated, belonged to said family from the year 1449, as evidenced by a judgment rendered by the Bishop of that time, who declared that the V. family possessed the right to present the Prior. This judgment was confirmed by the Pastoral Bull of Leo X, dated June 3, 1513. From that time until the year 1874, the V. family not only exercised the active right of patronage peacefully, but also the passive right, and although this benefice was a residentiary one, with the care of souls attached to it, for many centuries, the Priors of said family, through their substitutes, fulfilled the obligations attached to the benefice. In more recent times, when the benefice became vacant due to the renunciation issued by the cleric Enrico Comte V., a member of the Patrons, at an opportune time, Arbogast Comte, closely related to them in kinship, was presented, being sixteen years of age; however, the Ordinary refused to grant him institution, since the aforementioned appeared to be little inclined, or not at all, towards the clerical state. Then the V. family nominated Arbogast's younger brother, namely Anthony, whom, although the Ordinary initially refused, because he lacked the canonical age for benefices, later, as the Orators state, declared that he would accept, but under certain conditions. Therefore, these Patrons recall that not a few simple clerics of said family

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have, without any difficulty, obtained the Priory.

[*Latin ed. p. 202*]

202 INDULTS were granted, fulfilling obligations through another, with attached benefits, as evidenced by a document dated September 20, 1878, and firmly requested by the Apostolic See: 1° that Anthony might receive the tonsure and be invested with the office of Prior, upon a simple promise to receive the order of presbyter, so that he might have a vocation to this state at the time of its acceptance; 2° that he might be dispensed from clerical attire until he had completed his studies at the Gymnasium. The Prelate, when consulted according to custom, stated that among the personal obligations of the Prior or his Substitute were the fulfillment of residence and the exercise of pastoral care, as well as the obligation to offer four Masses annually, in addition to those he is bound to offer for the people. It was also stated that the pure income, free from all obligations, amounted to a sum of five or six thousand livres annually. He then noted that it could be questioned whether the patronage of the V. family was also passive, since in the Bull of Leo X, only mention is made of presenting a suitable person. Although the Bishop seemed to doubt the vocation of this boy to the ecclesiastical state, he nevertheless added that he would not oppose the granting of the petitions, once they were completed. o Synopsis of the discussion. POINTS OPPOSED TO THE PETITIONS. It was stated that, with regard to the reception of the tonsure, there remained no difficulty, since Anthony was of legitimate age, and the Bishop did not appear to be opposed to its conferral. These points have been briefly noted for this part. Regarding the question of the collation, which seems to be the most important, it should be noted that the prayers of the petitioner seem to be contradicted by the Council of Trent, Session 25, chapter 6, on Reform, which states: "No one who has received the first tonsure, or who has even been ordained in lower orders, can receive a benefice before the age of fourteen years:" This law is also applicable to chapter 5, on age and qualifications for appointment. In this case, however, this suitability is required not only by common law, but also by the law of the foundation. This is evident from the statement made by the Bishop Andrea Trevisano, where it is said that a Prior should be presented who is suitable and sufficient, according to the wishes of those who left the property, as well as from the Bull of Leo X.

[*Latin ed. p. 203*]

INDULTI 203 specifies that a suitable person must be presented. To these are added conditions stipulated in the Regional Decree concerning the restoration of benefits from the year 1832, among which it is prominent that the person presented must be deemed suitable to fulfill both the material and personal obligations associated with the benefit. Indeed, this difficulty in granting a dispensation increases even more when it

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concerns a residential benefice, for which, according to what is stated in chapter [omitted], greater suitability and the age of 25 years are required, as confirmed by canon [omitted] which was renewed by the Council of Trent in session 7, chapter 2, concerning reforms. This must be considered even more strongly in this matter, because the requested grace would not only be detrimental to the divine worship, but also to the scandal of the faithful; and the power to dispense would not be for edification, but rather for destruction, as the Bishop indicated has happened with others who, in the past, have made use of such dispensations. And this must be carefully considered in the present case, especially since, as the Bishop testifies, it is easily possible that the person to be invested through inscription will later be compelled to enter military service, or, following the example of his older brother, will not embrace the ecclesiastical state at all. Even if the Most Reverend Fathers were to deem it permissible to grant a dispensation from the defect of age, so that the presented person could enter into possession of the benefice, nevertheless, a dispensation from the law regarding the wearing of clerical garments would not be permissible. Indeed, the fear of ridicule cannot be considered a sufficient reason for dispensing with the habit: for in these turbulent times, when almost no one is exempt from the insults of wicked men, it would follow that all clerics should request a dispensation from the ecclesiastical habit, which would be detrimental to the ecclesiastical discipline, which strictly and severely prescribes this garment. Therefore, in the Indult of Ariminen, April 5, 1851, § [omitted], after mentioning various legal jurisdictions in which this law is imposed, it concludes: "From which it is apparent how cautiously one must proceed when considering a relaxation of such a law, especially since the danger of scandal and admiration may be considerable."

THINGS THAT FAVOR THE PETITION. On the contrary, it is permissible...

[*Latin ed. p. 204*]

204 It is beyond doubt that, both in simple benefices and in those conferred by right of patronage, besides other qualities required for advancement, a suitable age is also necessary (as stated in Session 1, chapter concerning this matter, above). Nevertheless, for a just and legitimate reason, dispensation from this impediment is often granted, especially when dealing with those who are passively called, as Pirrus states in *Corpus Canonum*, book on ecclesiastical benefices, chapter 2, number 8, or in the case of relatives of the patrons, as Piton states in *Disputationes*, XII, number 42: "Capacity can be obtained through a dispensation from the Pope concerning the age, which is generally granted in benefices, even those conferred by right of patronage, even if the person is only 9 or 10 years old, for a reasonable cause, such as if a cleric has been presented by relatives of the patrons or by blood relatives of the

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founder." Vivian, in *Practica Jurispatronatus*, book 6, chapter 6, number 9. Indeed, a person presented by the family V. to a priory benefice is not only a relative of the patrons, but can also be considered as passively called. Although the Bishop argues that only the active right of patronage belongs to the family of the patrons, because both in the Bulla Leonina and in the Regium Decretum, mention is made only of a suitable person to be presented, nevertheless, since those descended from the family V. have been passively called for three centuries or more, without anyone contradicting, it does not seem doubtful that the passive right of patronage has been acquired by prescription of a hundred years, and therefore is privileged; especially since, in ambiguous cases, it is well argued that the right of patronage passes from the active to the passive, as Piton states in *Controversiae de Patronato*, allegation 83, numbers 7 and 8, and Cardinal De Luca, *De Iure Patronato*, number 5, discussion 29. Nor has the practice of this Holy Congregation been different in granting these dispensations. In the Capellania of Ascolana, a dispensation was granted on August 25, 1750, to a boy of two years of age; in the Abbey of Neritonen, on November 22, 1760, to a boy of four years of age, and in the Benefice of Lucana, on May 17, 1749, to a boy of five years of age. Such dispensations (as noted in Molen. *Dispensationes*, August 26, 1854) were granted either because the petitioner was one of the co-patrons or a relative of the patrons, or because the case involved those who were passively chosen, and the consent of those with an interest was obtained. Another reason for obtaining a dispensation is provided by...

[*Latin ed. p. 205*]

INDULGENCES 205 concerning the poverty of the Oratorians: Although the parents of the boy are not absolutely poor, they are certainly relatively so, namely, their assets are not sufficient to maintain the condition and status in which they were born, according to the Decree of the Sacred Congregation in Narni concerning dotal assistance, August 21, 1762, § 4, and the Rotunda of Decrees, number 9 and 10, before Durando; Lucidi de Visit. SS. LL., volume 2, § VIII, number 93, page 430. The Bishop, speaking on this matter, stated that the boy's parents are not wealthy, and that they strive as much as they can to ensure that their son receives a good education. Indeed, relative poverty provides a suitable reason to obtain favor or assistance, or some other form of benefit; and as Lucidi I. cited, number 95, the treasury of resolutions of the Sacred Congregation is full of such grants. Finally, concerning the dispensation from wearing the clerical habit, there is a favorable opinion of the Bishop, whose judgment is highly regarded in this matter. Therefore, having considered these things, it was referred to the judgment of the Most Reverend Fathers to determine how to respond to the prayers of the Oratorians.

RESOLUTION. The Sacred Congregation, after deliberation on July 26,

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1879, decided to respond as follows: As requested, it is not advisable; but considering the particular circumstances, a grant of suspension of nomination for seven years is granted, along with the transfer of the administration of the benefice to a suitable ecclesiastic, who, having fulfilled his obligations, will have sufficient income remaining, especially for the proper education of the young man.

FROM WHICH COLLECTIONS:

I. According to the general rule and the prescriptions of the canons, ecclesiastical benefices are to be conferred upon suitable persons.

II. Many things are required to ensure that someone is suitable for a benefice, including the advancement of the clerical order, age, doctrine suitable for the office, and integrity of morals.

III. Therefore, the Council of Trent, Session 24, chapter 12, decreed: "Therefore, let no one henceforth be promoted to any office in which the care of souls is involved, unless he has reached at least the age of 25, and has been engaged in the clerical order, and is recommended by the necessary doctrine for the performance of his office, and by the integrity of his morals."

IV. Sometimes, a dispensation is granted by the Apostolic See.

[*Latin ed. p. 206*]

206. Dispensations due to impediments of age are granted, especially when dealing with those who are passively called, and with a legitimate reason present. V. In ecclesiastical benefices, which require residence, either by law or by custom, only a temporary dispensation is granted, provided there are true and reasonable reasons. VI. In the case of a temporary suspension of appointment, provision had been made both for the parish and for the presentee, who, being relatively poor and passively called to this benefice, would have been considered unsuitable, and contrary to the custom of the pious Mother Church, which dictates that one should not lack any grace.

V. MARRIAGE. On July 26, 1879. SUMMARY OF FACTS. From bavarica, having returned from military service to his homeland, Baron Peter of B. took Teresia as his wife, with whom he had previously lived in marital custom, in order to unite her to himself in marriage. To avoid disgrace to the family from this union, his mother, Blanca, his uncle, Abel, and his aunt, Eulasia, proposed a marriage to a virgin of similar standing: but this was rejected by Peter. They then proposed a different girl, Julia, who was well-regarded by Eulasia, from an honest family in the same diocese, and endowed with a very substantial dowry. Eulasia had intended her nephew, as the firstborn in the family, to be her heir in her own possessions; therefore, Peter celebrated his marriage with Julia on November 25, 1862. A

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brief period of harmony reigned in the domestic home, since, whether due to antipathy between the spouses, or due to rivalry between the mother-in-law and daughter-in-law for dominance in the family, Julia began to wander outside the marital home, so that she gave birth to a son in the parents' dwelling, whom Peter, shortly thereafter, lamented at orbatum. After the disturbances following the year 1864, she no longer returned to the conjugal home; and in the month of August of the following year, 1865, a separation occurred, which was ratified by judgment.

[*Latin ed. p. 207*]

207. Marriage had been requested, with the intervention of the President of the civil court, to obtain consent from the husband. Abel and Eulasia endeavored to restore domestic harmony between the spouses; hence, Peter, at the end of the aforementioned year 1865, wrote a letter to his wife, filled with expressions of affection and sorrow. However, this seems to have been of little avail; for the woman did not return to the marital home until the beginning of the year 1878, when she became pregnant as a result of an adulterous relationship. Subsequently, Peter appealed to the Sacred Congregation of the Council, seeking to have the marriage declared null in the eyes of the Church for two reasons: namely, because he had previously entered into betrothal with a certain Teresia, and because, through force and fear arising from the threats of his aunt Eulasia, he was being deprived of his inheritance unless he married Julia.

DEFENSE OF PETER. The one who argues for the nullity of the marriage claims that, from the events that preceded the marriage, it is clear that there was a lack of free consent on the part of Peter; for he had already entered into betrothal with a certain young woman named Teresia, from the region of Bavarica. The advocate asserted that Peter was so bound to this woman by ties of honor and affection that it would almost be impossible for him to devote his heart to another woman. However, besides this obstacle to freely marrying Julia, another obstacle is found in an invincible antipathy and natural aversion that Peter felt towards the woman, to whom he only consented under the pressure of threats of disinheritance from his aunt Eulasia. All agree that the witnesses, along with the Notary, declared both the previous antipathy of Peter towards the girl, and the pressure exerted by his aunt and her threats of disinheritance, so that he would take the woman as his wife. Furthermore, this antipathy is said to have been increasingly strengthened by the confession of the woman herself, in the petitions presented to the civil court for separation; which indicates that she was so indifferent towards Peter before the marriage that she could recognize that the end of it was not her, but rather her dowry. Furthermore, the threats of disinheritance are confirmed by the fact that Peter accepted onerous

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conditions.

[*Latin ed. p. 208*]

208. To provide herself with a pretext for preventing the marriage, she added conditions. Therefore, she first sought to increase the dowry, and she obtained it. Furthermore, in the very act of the marriage contract, she imposed conditions to exempt herself from entering into the marriage. Since it is clearly demonstrated by the unanimous testimony of witnesses that Peter was coerced, it is evident that the testimony of the paternal uncle, Abel, from Aversa, is not worthy of belief; for while he asserts that before the marriage, his nephew Peter, after seeing Julia, inquired how the girl had been found, he responded: "She has a pleasing appearance." However, this statement lacks all probability; for while he should have been defending his own cause, he, along with his sister Eulasia, whom he admits to having greatly desired to be united in marriage, was the author of that marriage through threats and pressure; and after the marriage, he forced his nephew to reconcile with his wife. Moreover, it cannot be refuted by the letters given by the Baroness, the mother of Peter, on August 3, 1862, to the Marchioness de Montemart, in which she expresses her and her son's satisfaction regarding the future marriage, while she declares that she gave these letters to her son without his knowledge, and did so in order to conceal from the son's betrothed and relatives the fact that the son was unwilling. Nor can it be refuted by the gifts, both material and in the form of a photograph, given by Peter to his betrothed before the marriage, and by the tears of the same woman, as testified by the parish priest, upon the death of her son. Not because of the gifts, since she was obligated to fulfill all social duties, whether willingly or unwillingly; not because of the tears, which are attributable to the very nature of human beings, in a man of good character and susceptible to emotion, who otherwise believed his son to be. Finally, the letters given by Peter to his betrothed three years after the beginning of the marriage, in which he urges his wife, with words of benevolence, to reconcile, cannot be refuted; indeed, the lawyer argues that, as evidenced by letters from the uncle Abel in January 1865, and from the Lady Reimbovilla in November of the same year, the coercion and threats of disinheritance by the uncle and aunt continued for many years after the marriage, in order to force him to abandon the proceedings for separation, and to reconcile with his wife, even though she was unfaithful; Peter.

[*Latin ed. p. 209*]

209. Immediately after, these letters were written, not out of signs of good will, but under the influence of his father and mother, who feigned benevolence, in order to avert the evil of disinheritance. Furthermore, the advocate for the estate of Eulasia exerted his influence, claiming that the

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sum amounted to two hundred and twenty thousand francs, which he said were owed to Peter, because they belonged to the house and family, and had been transferred to Eulasia upon the death of her grandfather, due to the abolition of entailments in Gallia. He argued that these were essential for Peter, forming a part of the very fabric of the town, and that without them, the town would lose its value, its freedom, and its security, along with the splendor of his family. He stated that this was so true that the grandfather, recognizing the necessity of uniting these assets, recommended to Eulasia, upon his death, that she leave these assets to the future possessor of the town. He then noted that the fear of losing these assets was the reason that compelled Peter to seek a marriage with Julia, and not, as some might suggest, the wealth and dowry which he willingly relinquished before the separation, even though he was legally entitled to retain them. Moreover, considering these circumstances, he maintained that the fear of disinheritance and the loss of assets is equivalent to the fear of death, since possessions and property are, in a certain sense, like a second lifeblood. As Pignatelli teaches in volume 7, section 77, paragraph 6, and as many others have cited (DD). But not only the fear of losing all possessions, but also the loss of a large and significant amount, is considered so serious by the canonists that it is said to be equivalent to death, and can cause a constant man to fall. Sánchez, in book 4, disputation 5, number 20-26 on marriage, states: "The fear of losing assets can cause a constant man to fall." This is proven because it is equated to the fear of death, as Tiraquellus rightly teaches: "The fear of losing a large portion of assets can cause a constant man to fall." This is also proven from chapter 1 on the restitution of those who have been despoiled, in sections 6 and L. And from the law: "Unless there is a dispute about all or most of the assets." Furthermore, because this loss is considered so serious that it is equated to death, as Tiraquel extensively proves in "De Nobilitate," chapter 31, number 369. Therefore, in his Acts, volume XIII, page CXLIX, 14.

[*Latin ed. p. 210*]

210 OF MARRIAGES: It is universally believed to be true that the fear of a steadfast man is a valid impediment. It is just to fear the loss of a significant portion of one's possessions. For it is a grave loss, and can rightly move a steadfast man. This is what the Doctors seem to hold. Indeed, I believe that even when there is no fear of the loss of a great and notable thing, a steadfast man is rightly deterred by this: Thus Baldus. But other conditions, no less necessary and essential, must intervene in the matter. It is not unknown that a marriage begun out of fear, if certain conditions are verified as required by law, does not, due to the lack of free consent, sufficiently stand in its own strength, as is explained in Cap. 27, quaest. 2, Cap. Cum apud de Sponsal., Trid. Synod, sess. 24 cap. 1 de reform. Matr. The conditions required for the nullity of a marriage, based on the imped-

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iment of fear, are: 1° that the evil feared be grave in itself and not merely in the vain estimation of the one fearing; 2° that the fear be based on a rational foundation; 3° that the one instilling the fear be able to enforce the threat; and finally, 4° that the one experiencing the fear be unable to avert the consequences (as stated by Ferraris in Biblioth. Can., Matrim., no. 100). Indeed, all these conditions must be rigorously verified in the matter at hand. In the case of the proposed marriage, the matter concerned the loss of a substantial inheritance, over which Eulasia had previously established the power to appoint an heir. This disinheritance, which was reasonably feared, clearly resulted from the fact that the threats persisted for three years after the celebration of the marriage, and were indeed inflicted by the very person who was able to enforce them. Nor was Baro able to avert the threats themselves, despite employing all possible means to prevent the proposed marriage.

OBSERVATIONS OF THE DEFENDER OF THE BOND. The defender of the validity of the marriage, upholding the bond, noted two reasons given by the defenders of Peter, for his dissent in the marriage: namely, the betrothal, which Peter claims he entered into with Teresia, and the antipathy towards Julia. He refrains from refuting the first reason, because it is so inherently empty that even the defenders themselves do not insist on it, although they initially announced it; for it is within the law...

[*Latin ed. p. 211*]

Marriage has been examined, and it has been shown that betrothals do not invalidate marriage. Alice, refuting this argument, contends that Peter demonstrated not antipathy, but sympathy, when he first visited the girl with her uncle Abel. For when asked by her uncle how he had found the girl, Peter replied that she possessed a sympathetic appearance. Furthermore, Peter's mother soon gave a favorable report, both in her own name and in the name of her son, to her niece, the Marchioness of Montemart. And indeed, nothing else is deduced from the reason and manner in which Peter behaved before the marriage and during the celebration thereof. For in order to see her in the baths of Selins, he took a detour of 450 Roman miles; he presented nuptial gifts, and he appeared cheerful and satisfied to everyone. Moreover, Julia, who asserts that Peter was seen by all to be very fortunate in entering into this marriage, affirms the same, and Parochus adds that her consent was given without any hesitation or shadow of reluctance, in a loud and clear voice. Indeed, it is reported to him that Peter had written to one of his friends: "Rejoice with me, for I am marrying a wealthy heiress." To this is added Peter's own confession, which was as follows: "In view of the smallness of my patrimony, and of the heavy burdens that weigh upon me, and of debts, and also of my future condition, concerning which my aunt was causing me to be afraid, I cannot say that the wealth offered to me by the woman had any influence upon me." From this

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very confession, it is first deduced that the contemplation of wealth was a motivating cause for the marriage; but this cause, since it is not contrary to any of the three essential goods of marriage, cannot invalidate it, as Covarruvias De Matrim. 2 part. cap. 1 § unie. num. 7 states. Sánchez de matrim. 6* 2 disp. 29 num. 8; therefore, although it may have been less honorable, or even illicit, as long as it did not reject the proper ends of marriage, it does not make the contracting party guilty of even venial sin, as St. Thomas states, 4 dist. 30 q. 4 art. 3*. Caietan, in 2 To. q. 3 de matrim. Pontius de matrim, lib. 4 cap. 24 num. 43: "When someone enters into marriage because of beauty or wealth, in my opinion, it is not a venial sin... for it does not involve the total end."

[*Latin ed. p. 212*]

212 » » » » They could not have entered into marriage, unless they actually or habitually excluded the essential elements of marriage; but they only have the force of an inciting cause, to which they are expressly referred, and implicitly to the very essential elements of the act and the contract. However, even if the fear of losing an inheritance, which would have been a vitiating cause for the marriage, had, more or less, incited Peter to marry Julia, it cannot be doubted that the wealth of the bride was a concurring cause of the marriage; but it is established in law that if two or more causes concur in an act, then an interpretation must always be made in favor of the honest and lawful cause, so that the act may be upheld, because it is always presumed that the act itself is performed in the best way possible, *Rota Romana, decision 306, number 8; decision 611, number 33, part 4; and decision 71, number 10, part 6, rec.* "When several causes are referred to the celebration of an act, then the act is upheld by 'one cause, which is true, when that cause is 'sufficient by itself to sustain the act.'" All the witnesses testify that the marriage was initiated by Peter without any coercion from his aunt Eulasia, who threatened to deprive him of his inheritance. But even if it is true that Eulasia, under threat of depriving him of his inheritance, had urged her nephew to enter into the controversial marriage, it does not follow that the fear felt by Peter was of such magnitude as to invalidate the marriage. Indeed, there are certain conditions that must be met in order to establish a fear that affects a man of sound mind. It is absolutely necessary that the evil be grave, the fear of the evil be strong, the person instilling the fear be powerful, and even accustomed to carrying out threats, and that the person experiencing the fear be in a position to avoid the evil; *Sabellius, with common Doctors, in sum. tract, divers. §. on fear, number 3.* Furthermore, in this case, the first condition was lacking, because the fear alleged by Peter was not of avoiding an evil, but rather of not obtaining a profit; which does not constitute a just fear. Indeed, it was alleged that he feared losing an inheritance from his aunt, which, in no way, either in substance or in relation to the matter, belonged to him; he was invited by

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the hope of profit, but if he lost that profit, however great it might be, he would lose nothing of his own property; therefore, such a fear is neither just nor one that affects a man of sound mind, *Sánchez de matrim., p. 4, disp. 5, number 29; Pontius de*.

[*Latin ed. p. 213*]

MATRIMONII 213 matrim. I. 4 c. 6 n. 40 "Deinde, mihi videtur dicendum, quod timor" perdiendi lucrum* aut hereditatem* aut beneficium, quod quis" sperat ab aliquo, ad quod non habet ius, non cadit" in virum constantem... cuius optima ratio est, quia id non" tam est metu deterreri, vel obligari, quam invitari spe lucri; " spes autem et concupiscentia, ut inquit s. Thom., non minuit," sed auget voluntarium.

"Ex aliis autem conditionibus nullam verificari contendit, neque ex parte Eulasiae, neque ex parte Petri; non ex parte Eulasiae, quia violentia repugnabat illius religioni, charitati in nepotem, et studio conservandi decorem familiae. Praesumptas autem metus repugnabat etiam indoli Petri, quippe cuius testimonium apparet ex eo quod alias nuptias a coniunctis prima vice propositas, absque ullo timore et haesitatione abscisse respuit. Sed in casu quod hoc uno timore amittendi hereditatem amitae, ad Juliam ducendam fuisset Petrus impulsus, haud certo omisisset certam aliquam cautionem de successione sibi adstipulari, ne ob imprevidibiles eventus cogeretur uxorem exosam retinere, et concupitalo hereditatem amitae non lucrari. Atqui nullam retulit cautionem eiusmodi, ita ut Eulasia in suo testamento nepotem constituens heredem, neque ulli vel minime obligationi satisfacere innuit, neque de nepotis calamitate, cuius causa principalis ipsa fuisset, condolere ostendit; id quod demonstrat, quod de coactione nihil erat, quod sibi fuisset succensendum. Haec de validitate coniugii disserit Defensor vinculi. Subiungit praeterea, quod data adhuc et non concessa hypotesi invaliditatis, matrimonium nihilominus iam revalidatum fuisset ex cohabitatione et copula exinde sequuta. Scitum enim est, et nonnullae ex recentioribus causis in Thesauro relatae id aperte ostendunt, quod adhuc post Conc. Trid. matrimonium nullum ratificato si intercesserit habitatio diutina vel copula cum affectu maritali ceu ex cap. 2 de sponsalib. et cap. 4 qui matrim, accus, poss. et si impedimentum fuerit parti reconvalidanti cognitum, aliis autem occultum, ceu docent prae aliis Gonzalez comment. in cap. 24 de sponsalib. n. 5* Sánchez de matrim. I. 4 disp. 18 n. 12."

[*Latin ed. p. 214*]

214. MARRIAGES. That the marriage was null, or that an impediment of fear existed in this case, is clearly demonstrated by the confession of Peter, given in a judicial examination: "On the day of the marriage, I did not wish to enter the bedroom of that woman, because I did not consider her to be my wife." Furthermore, this hypothetical nullity was hidden from others,

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as is demonstrated by the fact that a notable part of the witnesses, whom Peter induced, were led by the conspicuous dowry of Julia; and the friends of the family worked to reconcile the spouses; which clearly shows that there was no public suspicion of the invalidity of the marriage celebrated by them. Having considered all of these things, it was deemed wise and proper for the undersigned to resolve the following DOUBT: Whether it can be affirmed that there is a nullity in the marriage in this case. RESOLUTION. The Sacred Congregation of the Council, after discussing the matter on July 27, 1879, decided to respond: Negatively. FROM WHICH IT MAY BE GATHERED: I. The contemplation of wealth, when it is a compelling cause for marriage, does not invalidate the sacrament, provided that he who enters into the marriage with such a view does not reject the three goods of marriage, either in habit or in act. II. Regarding this matter, since wealth does not have a total end in itself, it is rather more appropriate to call it a motivating cause; so that the contracting party is explicitly drawn to it, but implicitly is drawn to the very ends of the work and the contract. III. And therefore, even if wealth may be a cause for entering into marriage, when an interpretation must be made regarding its validity, one must stand by the just and honest cause, from which the act itself is governed and sustained. IV. In this matter, there is no reason to doubt the validity of the sacrament.

[*Latin ed. p. 215*]

MATRIMONII 215. The mind, although Peter may have been greatly tempted by wealth to pursue this course of action; and because, while he was expressly drawn towards these things, he implicitly did not reject three goods of marriage. V. From the Doctors, wealth is to be held according to a man's blood and is to be compared to his very life; and therefore, the fear of losing all or a greater part of one's possessions is considered to fall upon a steadfast man; provided that he does not lack a right in the matter or to the thing itself. VI. Hence, it cannot be said that the fear of losing wealth or an inheritance for which there is no right in the matter or to the thing itself is just, nor does it fall upon a steadfast man; because in this case, one seems rather to be invited by the hope of gain, than to be deterred by fear, or to be obligated. VII. In this matter, we are not speaking of an evil to be avoided, but of a profit not to be gained; because Peter was afflicted by the fear of not obtaining the inheritance of his aunt Eulasia; which in no way belonged to him; therefore, his fear cannot be considered just, nor does it fall upon a steadfast man. DISTRIBUTION. On September 20, 1879. SUMMARY OF FACTS. The Metropolitan Church Chapter holds a common mass, of which one-third consists of canonical benefices, and the remaining two-thirds are applied to daily distributions. Although, according to the law, the distributions benefit those who are present in the choir and are lost to those who are absent, nevertheless, the Canons,

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during the quarterly vacation, receive these distributions, not only by long-standing custom, but by the force of the Chapter Constitutions in which this is expressly stipulated. The Chapter Constitutions were promulgated and published by the local Ordinary, and have not been strengthened by Pontifical authority. Therefore, the Bishop, in his most recent report to the SS. LL.

[*Latin ed. p. 216*]

216. The Sacred Congregation of the Council inquired about the practice of distributing funds, to determine whether this custom, based on Capitular Constitutions, could be maintained. The Bishop reported that the origin of this custom could be traced, and that documents existed which confirmed it dating back to the year 1718. A summary of arguments in favor of the custom follows.

ARGUMENTS IN FAVOR OF THE CUSTOM. It appears that the custom of distributing funds during vacations, permitted by the Council of Trent, should be maintained. For, according to the general teaching of Canonists and Theologians, including St. Thomas (1-2, q. 97, n. 8, art. 5), any ecclesiastical law, legitimately established by custom, can be abrogated. Custom has the same force as law, and therefore, just as it can include a law, so too can it abrogate it. This is explained in the treatises on laws, and in L. 2 of the Code. This principle holds true even when a law is opposed to the custom, unless the law explicitly states that the custom is unreasonable, as many authorities have taught (Bonae Disp. 2, quaest. 1, punct. 6, n. 3 and 4; Anchar, cons. 51, m.; Glos, in Clem. Statutum de elect.; cap. 1 de clerico aegrot., n. 6; Covar, lib. 3, var., cap. 13, n. 4). However, the custom of receiving distributions during vacations does not appear to be unreasonable; on the contrary, it seems to be quite reasonable (Cenedo, part. 3, collect. 15, n. 7), where it is stated that the granting of two months to clerics for family matters and for honest recreation is a reasonable practice, and that, under the force of this custom, these clerics may receive daily distributions. Monet also holds this view (de distrib., part. 2, q. 12, n. 54; Covar, lib. 3, var., cap. 13, n. 5). Indeed, it is a good practice, for by such a custom, those granted vacations would be able to make better use of their time off, and thus, with their minds somewhat relaxed, they would return to their duties with greater fervor and enthusiasm, ready to resume their canonical hours and other ecclesiastical duties. Moreover, this custom is also based on Capitular Constitutions. It is not an objection that Probus says in...

[*Latin ed. p. 217*]

DISTRIBUTIONUM 217 d. cap. un. De cleric. non resid. in 6 num 34 asserat talem consuetudinem non valere. Nam in dicto capite unico improbatur consuetudo in quibusdam Ecclesiis introducta, ut qui absint a

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choro absque iusta et legitima causa de iure concessa, percipiant distributiones, non vero improbantur futurae consuetudines legitimae praescriptae, sicuti nec ipsas improbat Tridentinum in sess. 24 cap. 42 de reform, ubi in usum revocat Constitutionem Bonifacii. Iamvero si lex non faciat mentionem de consuetudine futura, sed simpliciter tollat praeteritam consuetudinem^ quod possit de novo induci consuetudo, eidem legi derogans, docent Gloss, in Clem. Statutum de leci.* Anchar, in cap. 4 de Constit, in 6 n. 30* Covar, loc. cit. num. 4, Vasquez 4. 2 disp. 477 cap. 8 num. 70. QUAE CONSUETUDINI ADVERSANTUR. Pro negativa vero per- pendendum est quod Tridentinum, renovando legem editam a Bonifacio VIII in cap. Consuetudinem, quascumque consuetudines percipiendi distributiones absentiae tempore, nisi ex causa de iure permissa , tamquam irrationabiles reprobat. Lex vero quae reprobat consuetudinem, semper reprobat, ut notat cum aliis Tiraquel. de retrat, in praef. n. 48. Alex. cons. 193 n. 8 lib. 2 Rota in Crac. iur. legendi 24 Martii 1627 coram Coccino. Cum autem lex semper loquatur L. Ariani Cod. De Haeret, semper etiam reprobat consuetudinem supervenientem et complectitur quae de novo accedunt, ut notant Franc, in cap. unie. De excess. Praelat, in 6* Gemin. ibid. n. 8. Sed et ulterius observandum est quod consuetudo, de qua sermo, irrationabilis est, subindeque nullimode sustinenda. Fagnan. in cap. Licet de Praebendis num. 7 7 . - ibi - « Am» pliatur primo praedicta conclusio, ut procedat etiamsi con» suetudine introductum sit, ut distributiones absentibus de» beantur, ea enim consuetudo non valet : sive introducta fuerit » ante Constitutionem Bonifacii in d. cap. unico , sive post , » quia cum ea Constitutio non simpliciter deroget consuetudini, » sed illi resistat, eamque reprobet ut iniquam et irrationabi> lem, ibi reprobantes: ex hoc censetur non tantum praeterita, » sed etiam futura sustulisse ut sentit Innoc, in cap. Ex parte...

Concerning distributions, 217 d. cap. un. De cleric. non resid. in 6 num 34 asserts that such a custom is not valid. For in the aforementioned chapter, a custom introduced in certain churches is disapproved, namely, that those who are absent from the choir without a just and legitimate cause granted by law, should receive distributions; however, future legitimate customs prescribed are not disapproved. Nor does the Council of Trent in session 24, chapter 42, concerning reform, disapprove them, where it revokes the Constitution of Boniface in its use. Indeed, if the law does not mention a future custom, but simply annuls a past custom, whether a custom can be introduced anew, derogating from that same law, is taught in the Glossary, in Clement's Statute concerning law. Also, in chapter 4 of the Constitutions, in 6 n. 30, Covar, loc. cit. num. 4, Vasquez 4. 2 disp. 477 cap. 8 num. 70. WHAT IS OPPOSED TO CUSTOM. On the negative side, it must be understood that the Council of Trent, by renewing the law promulgated by Boniface VIII in chapter concerning custom, reproves as irrational any customs for receiving distributions during a time of absence, unless it is for a cause permitted by law. However, a law which reproves a custom,

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always reproves it, as noted by others, Tiraquel, de retrat, in preface, n. 48. Alexander, cons. 193 n. 8, book 2, the Rota in Cracow, concerning legal readings, March 24, 1627, before Coccino. But since the law always speaks according to L. Ariani Cod. De Haeret, it always also reproves a subsequent custom and includes those that are newly added, as noted by Franc, in chapter one, De excess. Praelat, in 6, Geminus, ibid. n. 8. But it must also be observed that the custom, of which we speak, is irrational, and therefore cannot in any way be maintained. Fagnan, in chapter Licet de Praebendis, num. 77. - there - "It is further clarified that the aforementioned conclusion applies even if a custom has been introduced whereby distributions are given to those who are absent, for that custom is not valid, whether it was introduced before the Constitution of Boniface in the aforementioned chapter, or after, because with that Constitution, not only is the custom not simply annulled, but it is resisted, and it is reproved as unjust and irrational; therefore, it is considered to have abolished not only the past, but also the future, as Innocent understands, in chapter Ex parte..."

[*Latin ed. p. 218*]

218. Regarding DISTRIBUTIONS, it is often stated that the Holy Congregation... "also abolished a most ancient custom." Pignatelli, in the aforementioned passage, section 115, number 2, volume 9, and others cited there, share this sentiment. However, the most steadfast practice of the Holy Congregation, as seen in the decree of Pisauren, June 14, 1670, book 26, page 358, where it was stated, "Canon regulars are not to receive daily distributions during the vacation period, notwithstanding any ancient custom"; Cardinal Petrucci, in his commentary on Constitution 9 of Boniface VII, number 23, volume 3, page 297, also affirms that the decrees of the Holy Congregation, to use his words, "must be followed," since they possess legal authority concerning all, whenever the canons of the same Holy Council are interpreted due to the powers granted to it by the Supreme Pontiffs, as noted by Garz, in his work *De Beneficiis*, in the preface, and more extensively by Fagnan, in chapter *Quoniam a*, numbers 70 and following. From this, it follows that the opinion of those who believe that these resolutions should be understood either as pertaining to a custom not legitimately established, or as pertaining to a custom that interprets the Council's granting of permission for distributions even during the vacation period, is entirely false, as Moneta immediately notes, as Pignatelli points out in the aforementioned passage, section 129, number 5, volume 1. For De Angelis teaches in his modern work, *Praelectiones Iuris Canonici*, volume 1, title 4, number 12, that if there is a lack of reason in the custom, which is the first and essential prerogative of custom, then the custom can never be valid. Furthermore, it does not impede the validity of the custom, even if it is called "ancient" or "immemorabile," if it still possesses some validity, as is the case in this Church, where two portions of the common Mass are

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assigned to distributions. For this, in no way, prevents the Holy Congregation from declaring it invalid, as Pignatelli reports in the aforementioned passage, section 120, volume 1, number 2, where the following declaration of the Holy Congregation is found: "Canon regulars cannot, by virtue of any custom, even an ancient one, enjoy daily distributions during those three months, as stipulated by the 24th session, chapter 12, of the Council of Trent."

[*Latin ed. p. 219*]

DISTRIBUTIONS 219 * are permitted to be absent, even if all the fruits of the Canons consist of distributions from the "Moneta et Bonacina De Horis" [funds], and the lesser office which custom has established as law, with the authority of the Bishop recognized in the Chapter statutes. For it is known that the inferior cannot derogate from the law of the superior, and that such statutes have expressly been abolished by the Council in d. cap. 12. Furthermore, there - ibi - "Of any Statute: thus Pignat. cons. 115 n. S tom. 9. Regarding the matter of the S. C. in Elborensi of the 16th century, as mentioned by Zamboni, loc. cit. verb. Capitulum §. XI num. 1. "When the Canons of Cathedrals and Collegiate churches said that their statute, affirmed by apostolic authority, of being absent for one hundred days, and of receiving all fruits and distributions, was not included in the law of the Council; the Holy Congregation responded that it is included, unless it can be legitimately proven that such statutes have been confirmed by the Apostolic See." Having considered both of these points, the matter was referred to be resolved.

Whether the Canons of the Metropolitan Church are permitted to participate in the distributions during a quarter of vacation time, even if absent from the choir.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter on September 20, 1879, decided to respond: Negatively.

FROM WHICH WE GATHER:

I. The Council disapproves of the custom of receiving distributions during a time of absence, renewing the law promulgated by Boniface VIII in cap. Consuetudinem; which law does not simply derogate from the custom, but resists it, and reproves it as unjust and unreasonable.

II. For it is not possible to prescribe a custom, even...

[*Latin ed. p. 220*]

220 Concerning the distribution of alms, which is considered the first and essential prerogative of a religious habit. III. Furthermore, the Holy Congregation has issued numerous resolutions stating that it is not permissible for canons, during the time of vacation, to make their customary

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daily distributions, notwithstanding an ancient and venerable custom. IV. Nor has this custom been included in the chapter statutes, recognized by the authority of the Bishop, and certainly not confirmed by the Apostolic See; since the Bishop cannot derogate from a superior law. V. By the present resolution, the opinion of those who believe that a custom cannot be introduced contrary to the decrees of Trent is confirmed, due to the invalidating decree added by Pius IV, when, by a Bull, he confirmed Trent. (1) (1) Recall what we have stated in Vol. XII, page 498, column 2, regarding the question of whether the decrees of Trent can be annulled by contrary customs. REGARDING THE OBLIGATION OF MISSES. On December 20, 1879. A SUMMARY OF THE FACTS. The Capitular Vicar of the Diocese of M. reported to the Holy Congregation that the diocesan seminary, by virtue of a certain donation made to it in the year 1749, had undertaken the perpetual obligation of celebrating three Masses each week, as well as one Mass each year on the feast of St. Bernard. It is clear from the accounting books of the same seminary that this obligation was fulfilled for seventeen years from its foundation; but afterwards, for approximately one hundred years, the implementation of this obligation was interrupted, so that the last prelate, considering such a long interruption, believed that such an obligation had ceased to exist. Therefore, the petitioner asks whether the obligation of the Masses still persists, and, in the affirmative, requests absolution for past omissions, and the reinstatement of said obligation.

[*Latin ed. p. 221*]

ON THE OBLIGATIONS OF MISSES 221 concerning the eighty Masses to be celebrated annually by the Seminary. The Bishop states that there is no record of any reason for their omission. A Synodal discussion. IT APPEARS THAT THE OBLIGATION OF THE MISSES HAS LAPSED. Although the donor's will stipulated that these Masses should be celebrated perpetually, it seems that this obligation has been nullified. For, since matters concerning the obligations of Masses, which have transpired over the course of centuries, are often obscured in the annals of antiquity, it is easily conceivable that the same has either been restricted by the donor himself for a certain period, or has been abrogated in the meantime by the grant of an Apostolic indulgence. It is certainly difficult to believe that the superiors of the Seminary, mindful of their own salvation, would have so carelessly neglected the prescribed obligations of the Masses. Therefore, since fault and delict should not be presumed according to Law (Factum 197 ff. concerning legal matters), and since the truth cannot be investigated in any other way, it seems that one must adhere to the presumption, until the contrary is proven, according to the laws concerning marriage (Nuptura 58 ff. concerning legal matters), and concerning legacies (Numinis ff. concerning legal matters). Nevertheless, it is also important to seriously consider whether, over such a long period of time, the obligations of the Masses

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have been extinguished by prescription. Indeed, it is certain, and both law and natural law proclaim it, that any action pertaining to the Church or to a pious cause can be extinguished by the longest period of prescription (Ultimus et Author Quas act. Cod. De Sacros. Eccles.* Cap. Ad Aures 6* and cap. Illud 8 De Praescript.). Since, therefore, the law does not exempt the obligation to celebrate prescribed Masses from this general rule, it would seem that the privilege of prescription also applies in this case. Indeed, this is what learned authorities teach, especially on this point, because they admit the possibility of prescription based on chapter "Cum Beneficio" 5 concerning stipends (De Sacri f. Missae quaest. 1192 and seq.*), and in the Paschal Gloss. Tamburini, *In Math. celebr.*, book 5, chapter 7, § 1, who also testifies that many learned men consulted by him are of the same opinion. Many others can be cited, as listed by Ferraris in his *Bibliotheca canonica*, under the word "Prescription," article 1, § 1, number 6.

[*Latin ed. p. 222*]

222 CONCERNING THE OBLIGATION OF MISSES; Indeed, there are those in this matter who maintain that an extraordinary, namely, a thirty-year, prescription is sufficient; because the founder of the endowment of Misses, who has departed this life, must be considered to be absent, and therefore, according to L. 8 of the Code on prescription, immovable property possessed without just title is prescribed after thirty years, as Gobat states in *Expert*, treatise 3, n. 514, along with others cited there. However, this doctrine is by no means pleasing to Pasqualigo, in the aforementioned passage, question 1193; for he contends that, in the case of a prescription against the Church, it can only be perfected after the lapse of forty years. Nevertheless, it seems certain, according to the aforementioned Doctors, that the obligation of Misses can be extinguished by a thirty-year or forty-year prescription. But, in the matter of the Seminary, as appears from the letters of the Capitular Vicar, it has been demonstrated that a prescription exceeding one hundred years is in effect. Therefore, it remains to be said that the Seminary remains free from the obligation of celebrating the prescribed Misses, and therefore, it would be useless to discuss either the abrogation or the reduction of this obligation. THE OBLIGATION OF MISSES SEEMS TO REMAIN. It must be considered, however, that there is no doubt about the perpetuity of the obligation, which was assumed through the contract of donation; therefore, it would not seem sufficient to presume, even with a prescription of one hundred years, that this obligation has been extinguished. For, since it is certainly known that the obligation is perpetual, accepted by the donor, before he himself considers himself free from it, he should demonstrate, with clear arguments, the extinction of the obligation, and not simply by relying on a presumption arising from a prescription of one hundred years, even within the framework of the presumptive privilege of the Apostolic See, as can be seen in

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Romana Capellaniarum of June 30, 1768, §. Question, Molen. *Legati Pii* of February 27, 1858, §. An. And it is indeed a good principle, so that obligations might easily be overlooked, either by successive chaplains, or by a university or college, which never dies, and thus the wills of the testators would be defrauded, under the pretext of a prescription of one hundred years. Nor is it otherwise to be said regarding the argument based on prescription. For Felix Potestas maintains in *Tom. 4, part. 2, n. 2235*, that a prescription cannot be granted against obligations of Misses, because...

[*Latin ed. p. 223*]

ON THE OBLIGATION OF MISSES 223. By Papal law, during the period of minority, nothing can be prescribed concerning ecclesiastical matters. *L. de bonis fidelium*. See *Gloss.* on the word *Pupillus*. See also *ff. de acquisitione rerum dominorum*. However, the souls of the deceased, with regard to the dues owed to them, are like minors, because, just as minors are unable to act due to a lack of age, so too these souls are unable to act due to their condition. Therefore, it would not seem possible to maintain a prescription against the demanded obligations of Masses. Furthermore, prescription is introduced by human laws as a punishment for the negligent. *L. Ut perfectius 2 de Annali -praescript. cap.*. See *Vigilanti 5. De Praescript.*. However, neither negligence nor patience can be imputed to a deceased person, who, remaining outside of human dealings, cannot demand what is owed to him. Therefore, Pasqualig. aptly notes in the aforementioned passage, question 4047, number 7: "With respect to the deceased, the basis of prescription does not apply," nor is the heir (and in our case, the donor) acting "in good faith," because he cannot believe that the deceased does not care about the reduction of the legacy, as if he were not requesting it, for he would request it if he could. It follows that, generally, prescription is introduced by human laws for the sake of public peace and tranquility, and therefore it does not extend further than it extends to the deceased, as if they were outside of human jurisdiction. But not only does this undermine the basis of prescription, which consists in patience and negligence, but also because the dispositions of the deceased speak against it, always acting as if they were a law for the fulfillment of their wishes. As Pasqualig. notes in the aforementioned passage, number 9: "Since the deceased cannot insist on the execution of the legacy and the celebration of Masses, and since he remains outside of human dealings, he remains under the disposition of his ultimate will, which, just as it operates after death, also acts as a law imposed on his affairs, and insists on the execution of his own will." This argument is valid, as Riminaldo observes in *consil. 540, num. 4, vol. 5*. See *Cravetta consil. 294, num. 5, lib. 2, Cephal*. Therefore, from this point as well, prescription is prevented, and it follows that the heir remains in a state of mortal sin as long as he does not fulfill

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the pious disposition of the testator.

[*Latin ed. p. 224*]

224 CONCERNING THE OBLIGATION OF MISSES. This opinion, which some hold, DD, appears to be more probable; and since the Sacred Congregation has adopted it on several occasions, as is evident from the reduction of Misses in Romana, May 4, 4715; from the Roman Legate, June 49, 4788, to Dub.; from the Molen Legate of Pius, July 8, 4855, mentioned among the suppliant petitions. Therefore, having briefly considered these matters from various sources, the doubts of the EEs. PP. must be resolved. I. Does it pertain to the obligation of Misses in the case of a Seminary to fulfill its obligations? And, to the extent that it is affirmative, II. Can and in what manner should an absolution and reduction of Misses be granted in this case? RESOLUTION. The Sacred Congregation of Councils, having considered the matter, responded on December 20, 1879: To 1, Affirmative. To 2, Firmly remaining with the feast of St. Bernard, affirmative, according to the request, provided that the words are spoken with the Most Reverend. FROM WHICH WE MAY GATHER: I. When the obligation of Misses is, in itself, perpetual, it does not seem sufficient to simply presume its extinction based on a centennial period; but the extinction of the obligation must be demonstrated with clear arguments. II. It cannot easily be resorted to prescription for the extinction of the obligation of Misses; because prescription, being an institution of human law for the tranquility of the state, cannot be extended to the deceased, who are considered to be outside the jurisdiction of human law. III. The Sacred Congregation has shown in numerous resolutions that prescription does not run against legates of Misses. IV. For just as the affairs of minors, during their minority, are not subject to prescription by law, because minors are subject to a defect.

[*Latin ed. p. 225*]

ON THE OBLIGATION OF OFFERING MISSES: Those of advanced age are not able to fulfill this obligation, so the prescription [law of limitations] does not apply to the offerings for the dead, because their souls, due to their condition, are not able to act. V. Furthermore, civil laws admit of prescription, as a penalty for those who neglect their own rights; but no negligence can be admitted in the case of the deceased, who, being outside of human dealings, cannot demand what is owed to them. VI. Although, in this matter, the obligation of offering Masses, bequeathed by the Seminary, has not been fulfilled for a long period of time, nevertheless, the Sacred Congregation has not admitted of prescription, nor has it considered a prescription arising from a hundred years to be sufficient; and it is not possible to ascertain that such an obligation has been extinguished.

CONCERNING A DISPENSATION FROM THE EXAMINATION.

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December 20, 1879.

SUMMARY OF THE FACTS.

To the Priest G., a faculty had been granted by a rescript of the Most Holy [See] to retain the parish under the title of administration *ad nutum* [at the will] of the Holy See. However, after some time had passed, the same Priest presented a petition earnestly requesting that he be granted a dispensation from the examination, so that he might be able to obtain the parish in perpetuity, which he has administered for fifteen years. The Ordinary, consulted on the matter, stated that it was pleasing to him that the petitioner's desires be fulfilled, so that this might add encouragement to him to work more diligently in the vineyard of the Lord.

SYNOPTIC DISCUSSION:

WHAT APPEARS TO FAVOR THE PETITION.

Necessity, justice, and equity seem to suggest that the requested grace should be granted. For, advanced age and infirm health do not allow the petitioner to undertake the labors necessary for preparing for the examination. Furthermore, his doctrine and suitability are evident from the Parish Records, Volume XIII, page 59.

[*Latin ed. p. 226*]

226 CONCERNING THE dispensation granted for the office to be held, based on other public trials undertaken by him. Furthermore, concerning his doctrine and his suitability, there are more testimonies from the Ordinary, who has already reported to the Congregation of Sacred Councils, that the priest, the petitioner, has behaved well in the care of souls, and has gained the esteem and affection of the people. Nor is the law of Trent violated by this dispensation; for it is established that the examination was prescribed in order to determine whether the candidate possesses the necessary doctrine and suitability to prudently govern the people. But the petitioner now, for the first time, does not desire to undertake the office of parish priest; rather, he has on several occasions demonstrated specimens of his theoretical knowledge; to which is added practical proof of his suitability, in that he has already, for fifteen years, governed, to the satisfaction of the flock, the parish which he now requests as his titular see. Hence, it seems that the Tridentine sanction concerning the examination has been sufficiently fulfilled by equivalent means. To this is added that the petitioner has been recommended by the Ordinary. Nor should it be omitted that the Sacred Council, knowing of the candidate's suitability for governing a parish, has granted this favor, although the Apostolic Datary

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expressly demanded an examination, as can be seen in the document. The dispensation of April 26, 1879, is mentioned among the supporting documents. (1) THOSE THINGS WHICH SEEM TO OBSTRUCT THE PETITION. Contrary to the petitioner's requests stands the Tridentine decree in chapter 18 of session 24 of the Council of Trent, concerning reforms, where it is expressly demanded that those to be appointed to parishes subject to patronage be proven worthy through an examination. And the reasons presented by the petitioner do not seem sufficient to relax this law. Indeed, all of these demonstrate his suitability in the exercise of the care of souls, which can only be known through an examination in his advancement. From this, we learn that even men who are illustrious in doctrine and advanced in years, and who have devoted a long period of their lives to the service of the Church, have been subjected to an examination, as required by the law. Furthermore, the Bishop has, on other occasions, deemed the same priest unworthy to govern. (1) See this matter discussed in Volume XII, page 361.

[*Latin ed. p. 227*]

From examination 227, the parish was deemed unsuitable. All these things, considered together, seem to suggest that the requested dispensation should be denied. Therefore, after briefly considering these points on both sides, it was left to the judgment of the Most Reverend Fathers to decide what response should be given to the petitioner's request. RESOLUTION. After deliberation, the Sacred Congregation, on December 20, 1879, decided to respond as follows: It is the judgment and conscience of the Bishop. From which the following are gathered: I. The decree of the Council of Trent, Session 24, chapter 1, paragraph 8, which states: "...all those concerning benefices are to be held under the following conditions; so that no benefice which involves the care of souls can be obtained by anyone, unless through examination and the approval of the Ordinary." II. Furthermore, the decree of Alexander III, in chapter 4 concerning the office of the Archdeacon, still holds, which states that a benefice involving the care of souls can be obtained solely through the approval of the Bishop: "We command (there the Archdeacon is instructed) that no one be entrusted with the care of souls without the license and mandate of the Bishop." III. However, in this matter, after consultation with the Holy Father, it may have been granted by the Sacred Congregation an exemption from the examination, perhaps because the petitioner had already provided evidence of his suitability for the administration of the parish, and of his doctrine.

[*Latin ed. p. 228*]

228 FROM THE HOLY CONGREGATION OF INDULGENCES OF VIVIERS, CONCERNING THE IDENTITY OF THE BODY OF SAINT

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OSTIAN, PRIEST, AND CONFESSOR. Dated June 19, 1880. DECREE. Among the illustrious and holy men who brought the faith of Christ to Gaul, the perpetual tradition of Viviers and Le Puy rightly honors Saint Ostian, Priest and Confessor. For, in the third century after Christ, when Saint Fabian, the Roman Pontiff, is said to have labored greatly to spread the Gospel among the Western peoples, he cultivated the region of Velaunum, near the Helvii, with apostolic labors, and there he finally rested. His body, first hidden in a recess of the Valley of Couspiensis, was later, with the permission of the Church, brought to the nearby rural church of Saint Martin; from that time, it began to be called especially the church of Saint Ostian. Although this church had been devastated by barbarian incursions and restored to a larger form in the tenth century, it remained a constant and perennial tradition of the people of Viviers, confirmed by the most ancient monuments, and recorded even in the sacred liturgy, that the sacred body of Saint Ostian was still preserved in that church. Consequently, from the most remote centuries until our time, the people of Viviers have been accustomed to approach this rural church with great devotion, several times a year, either to implore rain, or to obtain other benefits, through the intercession of Saint Ostian. Since, through the operation of divine protection, this church has remained unharmed until our time, it seemed best to the Most Reverend Lewis Delcufy, Bishop of Viviers, in the year 1868.

[*Latin ed. p. 229*]

VIVIERS. 229 Suitable investigations were instituted, with the aim of discovering the sacred relics of Saint Opportune. Therefore, after removing the previous flooring, another, very ancient pavement was found beneath, dating from the 5th or 6th century, entirely intact, and still bearing traces of the original altar. Furthermore, upon removing this pavement, a rough stone area was revealed, devoid of any inscription, within which the bones of a man of advanced age were found, as a careful examination confirmed. The people of Viviers and the surrounding regions were so convinced that this place was the resting place of Saint Opportune, that the news of its discovery filled everyone with great joy, and they immediately believed that the discovered remains were truly the relics of their true Patron and Master, and would honor them with due reverence, were it not for the prudent counsel of the Bishop himself, who, in accordance with the prescriptions of the Council of Trent (Decree concerning invocations, veneration, and the relics of the Saints and sacred images, session 25), advised that the matter be carefully considered beforehand. Following this advice, the new pastor of the Church of Viviers, the Reverend Father Frederick Bonnet, deemed it necessary to submit a judgment regarding the identity of the discovered remains to this Sacred Congregation for Indulgences and Sacred Relics, along with authentic records of the discovery. The Sacred Congregation,

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after carefully considering the opinion of another of its Consultors from Rome, proposed the following question: Whether the relics found beneath the altar of the Chapel of Couspiens on September 18, 1868, truly and properly belong to the body of Saint Opportune, the Presbyter and Confessor, and therefore, whether it can be affirmed that they are indeed the remains of that same person. The Fathers, in a general meeting held in the Vatican Apostolic Palace on June 14, 1880, after careful, thorough, and perpetual consideration, and firmly supported by ancient and most important traditions, as well as by liturgical texts, and also by the fervent devotion of the people towards Saint Opportune, which has grown even more since the discovery of these relics, and thus, a new and splendid monument to their identity has been established.

[*Latin ed. p. 230*]

230 VIVARIENSIS. He provides evidence; moreover, after careful consideration of the opinions of the Roman Consultors, and after all matters have been thoroughly discussed, they decided to write: "Affirmative, that is, it is established that the body in question belongs to the Confessor, Saint Otián." And after a report on the aforementioned matters was presented to His Holiness Pope Leo XIII by the undersigned secretary, during an audience held on June 19, 1880, His Holiness approved and confirmed the resolution of the Holy Congregation. OPINION OF THE CONSULTOR. The Consultor proposed to divide his opinion into two parts: first, describing historically the cult of Saint Otián, the successive depositions of his body, and the most recent discovery; and second, examining critically those points that pertain to proving the identity of said body. Beginning with a historical investigation, he notes that very little is known from ancient tradition of the Church of Aniciensis and Vivariensis concerning Saint Otián. However, the tradition of the Vivarienses states that, in the third century, he traveled through the region of Velaunum, near Helvia, and therefore, the place where he is believed to have performed the sacred functions of his ministry was named Saint Otián. At that time, Saint Fabian, Pope, from the years 240 to 254, worked diligently to spread the light of faith, especially in Gallus. Therefore, it seems not unworthy that Saint Otián may have been among those whom Saint Fabian sent to preach the Gospel in Gaul; and some say that he was a Bishop, although in the martyrology, for June 30th, it is written: "In the territory of Vivariensis, Saint Otián, a Presbyter and Confessor." In the older martyrologies, no mention is made of Saint Otián. The first of all to mention him was Usuard, a monk; who compiled his martyrology after the middle of the ninth century. From the Codex Usuardi, Baronius derived the elogium, and in his notes, he added: "Usuard also speaks of him on this day." However, the ancient and constant tradition of the Vivarienses, concerning the tomb and veneration of Otián, states that the Confessor, having happily completed the course of his earthly

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pilgrimage, is located in a remote and shady valley, in the outskirts of the city, in a structure built by...

[*Latin ed. p. 231*]

VIVIERS. 231, a cell has been located. Although no traces of the first structure of this tomb remain today, the place is still celebrated by tradition; where, with a solemn litany, the clergy and the people stand and chant the antiphon, verse, and prayer of St. Confessor. After the granting of peace to the Church, the body was transferred to the church of St. Martin outside the city of Ostia; which church, having been destroyed by Vandal incursions, was restored to a larger form in the tenth century, as it now stands. When the Bollandists, in preparing the most learned volume fifth for the year 1702, investigated St. Ostia, the Master of the choir of Viviers wrote to them: "Would that God would reveal to us the very place where it remains hidden, so that we may pursue that sacred relic with due honor, as well as the other saints resting there..." Soon after, he adds: "That church of St. Ostia, and St. Martin, is a rural church, and the people of Viviers go to it processionally during Lent, and at other public necessities." This sacred building is surrounded by several sepulchral urns; however, the antiquity of the earlier chapel is more clearly revealed by the arrangement of these spaces. For although the entire area surrounding the modern Couspiensis temple is surrounded by such urns and niches, several of those in the aisles and in the upper part of the temple are recognized as belonging to an earlier age, namely the fifth and sixth centuries, while those belonging to the lower part of the temple date only to later centuries. It is a divine providence that, when in the sixteenth and eighteenth centuries, the barbarism of heretics and innovators destroyed so many sacred monuments and temples, especially in Gallus, this small church of Viviers survived, so that the memory of St. Ostia would not perish. (1) Since all indications suggested that the body of St. Ostia rested in this rural church, in the year 1868, the Reverend James Rouchier, (1) A certain peasant, a good and devout man, acquired that ancient church with his own money, when it was being sold under a fiscal decree, in order to remove sacrilegious hands far from the holy place; and to protect the sacred relics of St. Ostia, which he had learned were there from his parents and grandparents, in his possession, with the hope that, if the time should come, he would restore that sacred relic to the Cathedral Church. That man was distinguished by his faith and was eighty years old when the sarcophagus was brought to light.

[*Latin ed. p. 232*]

232 VIVABIEN. The Bishop of Viviers requested that investigations be permitted in that locality concerning the sacred relics. Having obtained this permission, on September 18th, he approached the Church of Couspie with Dom Ludovico La Vallette, Canon and Archpriest, and the noble man Dom

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Edward de Pavin de Lafarge. During this visit, the body of Saint Opportune was discovered after a diligent investigation. Everything that followed was verified by the episcopal court and recorded in authentic documents. Proceeding to a critical examination, the consultant stated: "The way has been paved for this investigation by what has already been reported. For the body found in the Church of Couspie does not exhibit the characteristics of a common, profane burial, but it is doubtful that it belongs to any saint. Indeed, the ancient discipline of the Church never permitted the bones, even of the pious, to be placed beneath the altar, unless their sanctity had been solemnly declared and their name inscribed in the sacred diptychs. As Saint Augustine writes concerning the Holy Innocents: "See what place they merit among men," who had merited a place beneath the altars with God. For Scripture says: "I saw under the altar the souls of those who were slain for the word of God, and for the testimony which they held." Under the altar, it says, I saw the souls of the slain? . . . " It is fitting that the souls of the just rest beneath the altars, because the Body of Christ is offered above the altar; and it is not undeservedly that the just, avenged of their blood, plead there, where also the blood of Christ is shed for sinners. Therefore, it is fitting and as if for a certain communion that the burial of the martyrs was decreed there, where the death of the Lord is celebrated daily. I say, it is not undeservedly that a tomb of the slain is established there, where the members of the Lord's sacrifice are placed, so that those whom He had united with Him in a single passion might also be united in a single place in faith. Indeed, Saint Gregory of Tours writes in his book "On the Glory of the Confessors," Chapter 37, that this honor was also begun to be granted to holy confessors in their lifetime. Thus, among other things, he writes about the tomb of the Venerable Bishop: "There is (in the Church) also the tomb of the Venerable Bishop, from whom this building received its name, which is placed beneath the altar, above which the head is..."

[*Latin ed. p. 233*]

VIVIERS. 233 "Whoever wishes to obtain a grace, let him pray with earnestness for what is necessary, and he will soon obtain the desired effect, if he prays according to the will of God." The authors of liturgical works, relying on these authorities, transmit the same. Thus, Cavalerius, Vol. 3, chap. 17, Decret. 27: "It is clearly demonstrated that the burial place beneath the altar is reserved for the bodies of the Saints, so that it may be understood that it will rightly be denied to the bodies of others." And Catalan, in his Commentary on the Rubrics: "Beneath the altars, according to the ancient and universally approved discipline of the Church, only the remains of the Saints, and especially of the Martyrs, are buried, and nothing else." Also, Baruffaldus, in his commentary, rubric no. 107: "Honor is usually paid to the altars only to the Saints to whom the Church has already granted veneration; therefore, to be buried beneath an altar

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would be a certain declaration of sanctity." In the early Church, altars were erected over the tombs of the Saints, especially the Martyrs, and above their bones, so that the sacrifice offered to God might also redound to their glory. Since it cannot be doubted from what has been said that the body found beneath the altar at Couspy belongs to some Saint, it is not uncertain to which Saint it belongs, even if there is no decorated epitaph. St. Martin of Tours, in the work already cited, recounts many discoveries of holy bodies, but he mentions only two tombs that bore the name of a Saint. For in ancient times, those sarcophagi which were to be buried and hidden beneath the earth were made of rough stone and with rustic workmanship, and, for the most part, did not admit of sculptures or inscriptions. The names of those interred within were, as it were, preserved in the memory of the faithful, and were constantly transmitted from fathers to sons through tradition. In our case, the very place where the sarcophagus was placed, namely, St. Opportune's, sufficiently indicated the name. For it was a constant and universal tradition that the sacred relics of St. Opportune had been placed in that place. A valid indication of this is the frequent visits of the people of Viviers and Le Puy to the church of St. Martin, which was then called the church of St. Opportune. Also, the desire to rest near that church after death. For it was the wish of the faithful to be buried near the memory of the Saints, as the example of St. Ambrose and others shows.

[*Latin ed. p. 234*]

234 VIVIERS. Antiquity teaches this. But why, among all other places, did they choose that temple for their solitude, unless it was so that, being closer to the body of their Patron, they might be aided by his prayers? Among other documents, there is a manuscript martyrology of the 11th century preserved in the Archive of the Church of Viviers, in which it is said: "The day before the Kalends of June. In the territory of Viviers, in the church of Saint Martin of the Valley of Couspiensis... until the present day, the body of the blessed Ostian lies there, along with many others." In the Office of Saint Ostian, approved by the Holy Roman Church in 1857, and granted to the Dioceses of Aniciensis and Viviers, it is stated: "His body lies in the church of Saint Martin of the Valley of Couspiensis, and therefore, the people of Viviers go solemnly to this church to implore rain during times of drought." To this, it must be added that although that church appears to have been first built in honor of Saint Martin of Tours, it later also took the name of Saint Ostian, and indeed, in such a way that he is preferred to Saint Martin. This is learned from particular documents of that place. It was a venerable custom in ancient times to place that saint beneath the altar, whose name the sacred building was called. Therefore, since history and tradition do not mention anyone else, except for Ostian, as having been buried in that chapel, there is no doubt that the body buried

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beneath the altar of the temple belongs to Ostian. Beneath the altar is a panel; which appears to have been painted at the end of the 17th century, and which depicts the images of two figures, one clothed in a surplice and stole, the other adorned with episcopal insignia, in which manner Saint Ostian and Saint Martin are usually depicted. Concerning such images, John Ferrandus, in Disquis. relig. L 2, c. 6, sect. 6, says: "These paintings and sacred signs of the saints, painted on the walls of temples, are a very strong kind of proof." Therefore, we may rightly trust that they are true and genuine representations of the blessed, who are said to lie in their tombs, provided that such paintings are ancient and approved. Since these paintings have remained intact for many centuries, having been seen and approved by the Bishops and Prefects of the Churches, and no one has contradicted them;

[*Latin ed. p. 235*]

VIVIERS. 235. It is a question whether those venerable relics, which are commonly venerated there, can truly be called relics; (1) The value of the arguments derived from the images is strengthened if one observes that that temple was dedicated to Saint Martin, so famous throughout Gaul. This fact cannot be adequately explained unless one admits the presence of the body of Saint Rusticus, and that a portion of his right hand was given to that image. Furthermore, the inspection of the very place, and the discovery of the sarcophagus, clearly confirm the identity of the body. Tradition almost certainly stated that the body of Saint Rusticus was brought to the temple of Saint Martin. The excavations carried out in the year 1868 showed that the original pavement, laid in the late fourth century or early fifth century, (upon which a more recent one was placed, in the tenth century), had never been overturned, nor even disturbed in the slightest; indeed, traces were still visible of the original marble area, built over the body of Saint Rusticus. Furthermore, tradition stated that the blessed Rusticus was not brought to that place immediately after his death, but later, after peace had been restored to the Church. This is also demonstrated by the very small size of the sarcophagus, and by the fragments of a foot that were found inside. These fragments, indeed, belonged to the primitive cell, which, mixed with bones, had been enclosed in the sarcophagus. It is only if the blessed Rusticus was buried under the altar that the bones of only one, elderly man, were found in that place. However, an examination was made in the year 1117, by the Legate of the Apostolic See, and renewed by the Prelate Nicholas; finally, in the year 1529, John Besse, sacristan of Viviers, compiled a catalogue of the relics, and was astonished that, among so many relics of Saints, there was no mention of the blessed Rusticus. However, this astonishment was dispelled by the recent discovery, and by the fact that his tomb was found intact. An objection might arise from the words of the martyrology of the 11th century: "There lies (it is written there) until the

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present day the holy body." (1) Therefore, Father Cordara rightly asserts concerning the discovery of the bodies of the saints Primus and Felician: "In the time of Urban VIII, there were sufficient documents of tradition to recognize the relics of the saints Primus and Felician, namely, the altar dedicated to them, under which they rested, and the mosaic of the Tribune of the Chapel."

[*Latin ed. p. 236*]

236 VIVIERS. The blessed Ostian, along with many others, » so that it may be believed that the relics of Saint Ostian were not separated and placed in their own location, but rather were found together with the relics of many other saints. First of all, it must be noted that the phrase « with many others » frequently appears in ancient catalogs, or itineraries of the cemeteries of the City; however, it indicates only that the bodies of several saints were placed near the foundation of Saint [Ostian], or in the same cemetery, but not in the same tomb. Thus, for example, in the *Notitia locorum sanctorum Romae existentium* (Account of the places of saints existing in Rome), we read: « Saint Saturninus rests with many martyrs »; and elsewhere, concerning Saint Sotero, V. and M. « where he lies with many martyrs ». Regarding the body of Saint Ostian, the same thing happened, before his translation to the Church of Saint Martin; for before peace was restored to the Church, perhaps he rested with many others in the same area of Viviers. Finally, with peace restored to the Church, the body of Saint Ostian was brought to the Temple of Saint Martin, while the relics of the others were placed in the Cathedral Church. However, there should be no doubt about the identity of the body of Saint Ostian; for it is known from so many arguments of tradition, history, and sacred archaeology. Thus, the Sacred Roman Congregation proceeded to recognize and approve the relics of the martyr Saint Medici, found in the Church of Saint Victor in Otricoli, as is read in the Decree of July 16, 1612, approved by Paul V. « Since, in the territory of Otricoli, in the Diocese of Narni, among the ruins of the ancient city of Otricoli, near the banks of the Tiber, where the ancient Church of Saint Victor of that city had been built, » seventy-five bodies were found, which were said to be those of saints, and among them, in a particular tomb made of Tiburtine stone, many bones were found, along with a skull, with the following inscription placed on a small stone hidden in the aforementioned tomb, namely: - Here rests the martyr Medici of Christ, with many others - . . . . The same Sacred Congregation judged, from the aforementioned process and report, that it was not sufficiently proven that all seventy-five bodies were truly the bodies of saints, and that they should be venerated as such, except for only

[*Latin ed. p. 237*]

VI. VARIATIONS. 237. Concerning the aforementioned body of St. Medi-

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cus, which he judged to be truly the body of a martyr, and to be worthy of veneration. From this decree, it appears that the Apostolic See has not been accustomed to suspend judgment regarding the identity of the body of a saint, when suitable proofs are presented, even though it may remain uncertain to which other bodies that designation applies – to many, or to very many. Hence, the Consultor concluded: since it has been demonstrated that the body found beneath the altar of the Church of Couspiensis belonged not to any pious man, but truly and properly to St. Otián, the Apostle of the Vivarése, therefore nothing further is to be desired. For Benedict XIV stated: "Those who write together generally agree on the matter and the effect of which we are speaking, that moral evidence is sufficient." And he appropriately brings forward this opinion of Papebroch: "For it is fitting that human inquiry should be diligent where further labor would be fruitless, and that the religious veneration of relics should be protected from the danger of superstition." – lib. 5, p. 2, c. 14, n. 9. Hence, the people of Viviers, having now discovered the remains of St. Otián, their patron, can rightfully exclaim, as Ambrose said in Epistle 22 to Marcellinus, concerning the discovery of the bodies of SS. Gervasius and Prothasius: "These eyes were closed as long as the bodies of the Saints were decaying. The Lord has opened our eyes; we see the help by which we are defended; we did not see these things, but we had them nevertheless... We have found one thing by which we are strengthened to surpass our ancestors. We have attained the knowledge of the Saints which they had lost. Noble relics are rescued from an ignoble tomb, and trophies are displayed to the heavens."

[*Latin ed. p. 238*]

238 FROM THE DECREE OF THE HOLY CONGREGATION FOR RITES: whereby it is prescribed that the feast of Saints Cyril and Methodius be celebrated annually with the proper office and Mass of the lower rite. October 25, 1880. Many Sacred Ministers of the City and the World, convened in Rome in the year 1877 for the purpose of the ecumenical Council, made it abundantly clear that they desired that from the Apostolic See, honor and worship, through the annual celebration of Offices and Masses, be granted to certain Saints in the entire Catholic world, who, like more brilliant stars, shine perpetually in the eternities, having, by following the deeds of the Apostles, labored more diligently in building, establishing, and strengthening the divine edifice of the Church among diverse peoples and nations. The request was presented to the Supreme Pontiff, of glorious memory, Pius IX, who therefore wished to consider this matter in a special meeting of the Congregation for Sacred Rites, held on May 28, 1877. However, a favorable decree was issued concerning one holy Bishop and Martyr, Boniface, the renowned Apostle of the Germans, for whom, due to the most grievous calamities that had befallen those Churches after the passage of time, more urgent circumstances were

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present. Regarding others, among whom are the illustrious Apostles of the Slavic people, Cyril and Methodius, it was decided to postpone the matter. However, having resumed consideration of this matter, Our Most Holy Lord Pope Leo XIII, on the aforementioned September 30th, issued the memorable Encyclical Letter *Grande Munus*, whereby, taking advantage of the changed state of affairs in those regions, he commanded that the beloved Slavic peoples be more widely assisted under the patronage of the Most Holy Fathers, so that they may be powerfully defended in the present time, just as the Catholic faith was once spread from destruction to salvation; and he ordered that, on the established day of July 5th, which Pope Pius IX had established for certain places, it be inserted into the Calendar of the Roman and universal Church.

[*Latin ed. p. 239*]

URBIS ET ORBIS 239. Furthermore, the feast of the Saints Cyril and Methodius is to be celebrated annually with a proper Office of two minor hours and a proper Mass, which the Sacred Congregation has approved according to legitimate rites. Moreover, since a particular Office had already been granted to some dioceses for some time, and in order to extend it to the entire Church, it was deemed better to prepare a new schema for the Office and Mass, with certain additions to be made to the Roman Martyrology. This, in truth, was prepared with special Apostolic authority, and, as appears in the preceding example, was carefully examined by the Most Eminent and Reverend Lord Cardinal, Prefect of the Congregation of the Holy Roman Church, together with the Reverend Father, Promoter of the Holy Office, and the Reverend Assessor of the Sacred Congregation, and, on the indicated day, was presented to the Most Holy Lord and approved by His Holiness in all respects, who ordered that it be recited everywhere by both the clergy, according to the provisions of the aforementioned Encyclical Letter, in the performance of divine offices. Moreover, He benignly granted that those dioceses of Slawonien which have already, since the year 1763, by the Indult of Pope Pius IX, been accustomed to perform the special Office of the Saints Cyril and Methodius with Mass, may continue to do so, except for three readings of the second Nocturn, which must be replaced by those prescribed in the present Decree, and except for the addition to the Martyrology; and that those same dioceses are given the power to adopt, if they wish, the hymns newly approved, as mentioned above. All other rubrics are to be observed, and nothing contrary to this is to be considered. October 25, 1880. D. CARD. BARTOLINIUS, Prefect of the Holy Roman Church. L. S. Reverend Father Placidus Ralli, Secretary. Ioannes Can. Ponzi, Substitute.

[*Latin ed. p. 240*]

DECREE: Concerning the beatification and canonization of the venera-

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ble Servant of God, Father Joseph Bartholomew Menochio, of the Order of the Eremites of Saint Augustine, Bishop of Porphyreon, Prefect of the Apostolic Sanctuary. Whereas, on the Kalends of February of the present year, the Most Holy Pope Leo XIII, with paternal benevolence, ordered that an investigation be conducted in the Ordinary Congregation of Sacred Rites, without the intervention or vote of Consultees, at the request of the Reverend Father Nicholas Primavera, General Postulator of the Causes of Beatification and Canonization of the Servants of God of the Order of the Eremites of Saint Augustine, and whereas, the Eminent and Reverend Cardinal Thomas Maria Martinelli, Promoter of this Cause, in the Ordinary Congregations of Sacred Rites held today at the Vatican, proposed the following question for discussion: – Whether it is established by Apostolic authority in Rome that the Process is valid and relevant (constructed upon the fame of the sanctity of life, virtues, and miracles in general of the aforementioned Venerable Servant of God) in this case and to the effect of what is being considered? – The Eminent and Reverend Fathers entrusted with the preservation of the Sacred Rites, having carefully considered all matters, and having heard the voice and writings of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond: "Affirmatively." July 5, 1879. These matters having been faithfully reported to the Most Holy Pope Leo XIII through his undersigned Secretary, His Holiness approved and confirmed the decree of the Sacred Congregation. July 11, of the same month and year.

D. CARD. BARTOLINIUS, Prefect of the Sacred Congregation of Rites.

PLA. CAN. RALLI, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 241*]

241 BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO XIII, PAPA, AN ENCYCLICAL LETTER TO THE ARCHBISHOPS, PATRIARCHS, BISHOPS, AND VENERABLE PATRIARCHS IN COMMUNION WITH THE APOSTOLIC SEE, TO ALL CATHOLIC PRIMATES, GREETINGS AND APOSTOLIC BENEDICTION.

To the Venerable Archbishops, Primates, and Bishops in Communion with the Apostolic See throughout the world, brothers, greetings.

(The holy city of God, which is the Church, being not contained by any limits of region, possesses this power, granted by its Founder, that it may daily extend the bounds of its territory, and spread forth the pavilions of its tabernacles. But this increase of the Christian people, although it is chiefly accomplished by the inward inspiration and help of the Holy Spirit, is nevertheless perfected by human works and in a human manner: for it is fitting that the wisdom of God should so order and lead all things, that it may be in harmony with the nature of individual things. But there is not one kind of men, or of offices, by which this access of new citizens to the earthly Sion is accomplished. For the first part of this is by those who

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preach the word of God: this Christ taught by His examples and oracles; this Paul the Apostle urged. *Isaias, Liv. 2; Acts, Tom. XIII, fase. OL. 16*)

[*Latin ed. p. 242*]

242 ENCYCLICAL LETTER: With these words: "How then shall they call on him in whom they have not believed? Or how shall they believe him of whom they have not heard? And how shall they hear without a preacher?" Therefore, faith cometh by hearing, and hearing by the word of Christ. This office belongs to those who have been duly initiated into the sacred mysteries. Those, however, contribute greatly with their efforts and studies, who either provide assistance in external matters, or who, through fervent prayers to God, obtain heavenly graces. Therefore, in the Gospel, women are praised who ministered to Christ, who was preaching the kingdom of God, from their possessions, and Paul testifies that it has been granted by the will of God to those who announce the Gospel, that they may live of the Gospel. In like manner, we know that Christ commanded his followers and listeners thus: "Pray the Lord of the harvest, that he send forth labourers into his harvest." And we also know that the first disciples, preceding the Apostles, were accustomed to pray to God in this way: "Give to thy servants that they may speak thy word with all confidence." These two duties, which consist in giving and praying, are not only very useful for extending the kingdom of heaven, but they also have the characteristic of being easily fulfilled by people of any rank. For who is so poor that he cannot give a small sum, or so occupied that he cannot for a time cease from his affairs to beseech God for the spread of the sacred Gospel? Men of apostolic spirit have always made use of such aids, especially the Roman Pontiffs, upon whom the solicitude for the propagation of the Christian faith rests most heavily; although the means of obtaining these aids have not always been the same, but have varied and differed, according to the variety of places and the diversity of times. 1 2 3 4 5 In our age, when all difficult matters are undertaken with the combined efforts of many, we have seen societies arise everywhere, some of which were founded for the very purpose of promoting religion in certain regions. Among these, the pious association that was founded about sixty years ago in Lugduni in Gallus stands out, which is dedicated to the propagation of...

[*Latin ed. p. 243*]

ENCYCLICAL LETTER 243 received its name. This initially concerned providing assistance to certain missions in America; but soon, like a mustard seed, it grew into a large tree, whose branches spread widely, and thus it extends a practical benefit to all missions throughout the world. This excellent institution was quickly approved by the pastors of the Church and honored with clear testimonies of praise. The Roman Pontiffs, Pius VII, Leo XIII, Pius VIII, Our Predecessors, commended it greatly and granted

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indulgences. And Gregory XVI, with even greater zeal, embraced it with paternal charity, who, in encyclical letters dated August 15th of this century, spoke of it in these words: "We consider it a truly great and most holy work, which is sustained by modest offerings and daily prayers offered by each member to God, and which, supporting the apostolic workers, is worthy of all admiration and love, as it is exercised in works of Christian charity towards the newly converted, and as it frees the faithful from the onslaught of persecution." And it should not be considered that this has recently brought such great benefit and utility to the Church without a special plan of divine providence. For, while the machinations of the enemy of all good assail the beloved bride of Christ, nothing could be more opportune than that, with inflamed zeal for the propagation of the Catholic truth of Christ, and with all available help, all should strive to enrich Christ.

Having said this, he urged the Bishops to diligently work in their respective dioceses, so that this salutary institution might receive new and daily increases. Nor did Pius IX, of glorious memory, deviate from the footsteps of his predecessor, who spared no opportunity to aid the meritorious society and to promote its greater prosperity. Indeed, with his authority, greater pontifical indulgences were granted to the members, Christian piety was aroused to support this work, and the most outstanding members, whose singular merits were evident, were honored in various ways.

[*Latin ed. p. 244*]

244 ENCYCLICAL LETTER adorned with the insignia; finally, several external aids which had been added to this institution were embellished and amplified by the same Pontiff in Lodi. At the same time, the emulation of piety caused two other societies to "unite, one dedicated to the Holy Infancy of Jesus Christ, and the other called the Schools of the Orient. The former is dedicated to rescuing and educating poor children, whom parents, compelled by idleness or poverty, abandon in a cruel manner, especially in the regions of China, where this barbarous custom is more common. Therefore, the charity of this society constantly receives these children, and sometimes, at a price, redeems them to be cleansed by the bath of Christian regeneration, so that, with God's help, they may grow up in the hope of the Church, or at least, if they die, they may be given the opportunity to attain eternal happiness. — The other society, as we have mentioned, is concerned with young people, and strives with all its efforts to imbue them with sound doctrine, and to prevent the dangers of false science, to which they are often drawn due to an improper desire for learning. — Furthermore, both societies provide assistance to the ancient one, which is dedicated to the propagation of the faith, and, supported by the prayers and alms of the Christian nations, conspire in a friendly alliance for the same purpose; for all strive that many, estranged from the Church, may come to the knowledge of God, and worship Him, and Him whom He

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sent, Jesus Christ. Therefore, as we have indicated, these two institutions, adorned with Apostolic letters, were honored by our predecessor, Pope Pius IX, and were generously granted sacred indulgences. Thus, with three societies flourishing under the favor of the most eminent Pontiffs, and with each diligently pursuing its own work, they have produced abundant fruits of salvation, providing considerable support and relief to Our Congregation for the Propagation of the Faith in bearing the burdens of the missions, and have thus appeared so vigorous that they also inspire hope for greater growth in the future. But more and more violent storms, which have been stirred up against the Church in that region—

[*Latin ed. p. 245*]

The Encyclical Letter, addressing those already enlightened by the Gospel, has brought detriment even to those works instituted for the betterment of barbarian peoples. Indeed, many causes have arisen which have diminished the number of associates and their generosity. And what can be expected from those who, with their minds devoted to devising, and their bodies to pursuing, pleasures, when everywhere false opinions are spread among the people, by which the desire for worldly happiness is intensified, and hope in heavenly goods is extinguished? Will these men contribute to prayers, imploring God to bring those sitting in darkness to the light of the victorious Gospel? Will they provide assistance to priests who labor and strive for the faith? Moreover, it has been necessary for even the hearts of pious men to become more restrained in their generosity, partly because the abundance of wickedness has cooled the charity of many, and partly because private hardships and public unrest (along with the fear of a worse age) have made many more tenacious in retaining, and less willing to give. A multitude of grave necessities press upon the Apostolic missions, as the number of sacred laborers diminishes daily; and those who are taken by death, weakened by old age, or exhausted by labor, are not readily replaced by others equal in number and virtue. We see religious families, from which many used to come forth for the sacred missions, now dissolved by harsh laws; clerics torn from the altars and forced to bear the burden of military service; and the goods of both clergy are almost everywhere seized and proscribed. – Meanwhile, with other plagues opened up which seemed impassable, and with the knowledge of places and peoples increasing, new expeditions of the soldiers of Christ have been sought out, and new stations established; and therefore, more are needed who will dedicate themselves to these missions, and who will provide timely assistance. We omit the difficulties and obstacles arising from contradictions. Often, deceitful men, sowers of error, simulate the Apostles of Christ, and, outwardly equipped with human means, usurp the office of Catholic priests, either by filling the place of the deficient, or by opposing the chair of the teacher who proclaims the truth, having

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judged that they have succeeded sufficiently if they cause those who hear the word of God to believe that it is explained differently by others.

[*Latin ed. p. 246*]

246 ENCYCLICAL LETTER which promotes the way to salvation. Oh, that something might be accomplished by their arts! Certainly, that which hinders those who, whether they themselves are such, or those who are vexed or disgusted by them, from embracing the pure light of truth, must be removed; often, they do not have a man from whom they may learn sound doctrine, and to whom they may be invited into the bosom of the Church. Truly, the little ones ask for bread, and there is no one to break it to them; the fields are white for harvest, and these are many things, but the laborers are few, perhaps fewer in the future. Given these circumstances, Venerable Brothers, we consider it our duty to encourage, with pious zeal and Christian charity, those who are eager to help, so that through prayers, and through alms, they may aid the work of sacred missions and promote the spread of the faith. The importance of this matter is shown by the good that is demonstrated to be achieved, and by the benefits and fruits that are derived from it. For this holy work tends to the glory of the divine name and to the increase of the kingdom of Christ on earth; and it is wonderfully beneficial to those who are drawn from the mire of vices and the shadow of death, and, besides becoming sharers in eternal salvation, they are transferred from rustic ways and savage customs to all the humanity of civil life. Moreover, it is very useful and profitable even to those in whose parts there are some deficiencies, for it provides them with spiritual riches, offers material for merit, and binds God as a debtor of benefits. Therefore, Venerable Brothers, we earnestly exhort you, who have been called to share in our concern, to diligently and zealously strive with us to support the apostolic missions, with confidence in God, and without being deterred by any difficulty. The salvation of souls is at stake, for which cause our Redeemer laid down His life, and He gave us, bishops and priests, for the work of the saints, for the perfection of His body. Therefore, while retaining that station and the care of the flock which God has entrusted to each of us, let us strive with all our might to provide the sacred missions with those supports which, as we have recalled, have been in use from the very beginnings of the Church, namely, the proclamation of the Gospel, and the prayers and alms of devout people.

[*Latin ed. p. 247*]

ENCYCLICAL LETTER 247 Therefore, if you know of any who are devoted to the glory of God and are eager and suitable to undertake sacred missions, encourage them, so that, having explored and discovered the will of God, they may not yield to the flesh and blood, but may hasten to obey the voices of the Holy Spirit. And to the remaining priests, to the orders of

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religious men and women of both sexes, and to all the faithful, I commend greatly that you entrust to your care that they never cease prayers, so that heavenly help may be obtained for those who spread the divine word. Let those who pray implore the most holy Virgin, who is able to extinguish all errors; her most pure Spouse, to whom many missions have already been entrusted, and who was recently declared the Patron of the entire Church by the Apostolic See; the Princes of the Apostles and the entire company, from whom the first preaching of the Gospel spread throughout the entire world; and finally, other illustrious men, sanctified by holiness, who have devoted themselves to the same ministry, or who have given their lives with their blood. To this supplication, let almsgiving be added, for its power is such that it can make helpers of apostolic men, even those who are distant in place and distracted by worldly cares, and their associates, both in their work and in their meritorious deeds. Indeed, it is a time when many are in need of help for this purpose; however, let no one despair: for the sum that is desired for this purpose can hardly be a burden to anyone, although, by collecting from many into one, sufficient support can be provided. Moreover, Venerable Brothers, I urge you, let each one consider that his generosity will bring him not loss, but profit, because he is lending to the Lord who gives to the needy, and for this reason the art of almsgiving is called the most profitable of all arts. Truly, if, by the authority of Jesus Christ himself, he who gives a cup of cold water to one of the least of his [disciples] will not lose his reward, then certainly, he who, by contributing even a small amount of money to sacred missions, and adding prayers, performs many and varied works of charity, and who, as the holy Fathers have said, becomes a helper of God in the salvation of his neighbors, will receive the greatest reward.

[*Latin ed. p. 248*]

248 ENCYCLICAL LETTER. With steadfast confidence, Venerable Brothers, we believe that all those who glory in the name of Catholic, inflamed by your sentiments and exhortations, will not fail in this duty which is so dear to Us; nor will their efforts in extending the kingdom of Jesus Christ be overcome by the diligence and industry of those who strive to spread the dominion of the prince of darkness. — Meanwhile, commending the pious endeavors of Christian peoples to God, We impart to you, Venerable Brothers, the Apostolic Blessing, a testament of Our most sincere goodwill, to you, Venerable Brothers, to the clergy and people entrusted to your vigilance, in the Lord. Given in Rome, at St. Peter's, on the third day of December, in the year 1880, in the third year of Our Pontificate. LEO XIII.

MOTTO: *Si qui sacris Missionibus sese devovere velint, et paternae supremi Eeclesiae Pastoris voci respondere desiderent, poterunt (attamen ex Italia tantum geographiee considerata) accurrere ad Seminarium Missionum, quod anno 1874 a Summo Pontifice Pio IX erectum fuit Romae

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(Via Mastai 18): supplicesque libellos dirigere vel ad Eminentissimum Dominicum Cardinalem Consolini, Seminarii Praesidem, vel ad Josephum Pennacchi illius Rectorem. Poterunt etiam sese convertere ad Seminarium s. Caloceri Mediolani, cuius praestantissimus Rector est Rmus Josephus Marinoni.*

LETTERS of His Holiness Leo XIII to the Archbishop of Dublin, in which he implores that he and his colleagues in the episcopate take care that the people of Hibernia do not transgress the boundaries of equity and justice in the present unrest. Venerable Brother, greetings and the Apostolic Blessing. We have gladly read your letter, which you presented to Us when you were in Rome, intended for the clergy and people of the Dublinensis diocese. In it, we recognized prudence.

[*Latin ed. p. 249*]

Letters 249, and concerning the equity of your mind: because, now that Ireland is stirred, partly by the desire for better things, and partly by the fear of uncertain events, you offer counsel most opportune for the times. We are indeed troubled and grieved by the miserable condition in which Catholics from Ireland find themselves; and we attribute much to their virtue, which is greatly tested by adverse circumstances, not for a short time, but for many centuries and generations. For they have, with the greatest fortitude and constancy, preferred to endure any hardship rather than abandon their ancestral religion, or to deviate in the least from the ancient faith towards this Apostolic See. Therefore, it is a most outstanding and enduring praise that among them, examples of the noblest virtues have never been lacking. These considerations compel us to embrace them with paternal benevolence, and we earnestly desire that some remedy be quickly applied to the afflictions and inconveniences they suffer. At the same time, however, we judge it necessary to strongly caution them, lest the opinion of their genuine and domestic integrity be diminished, and that they admit nothing rashly, by which they might appear to have rejected due obedience to those legitimately in authority. And for this reason, if Ireland should ever become inflamed in the defense of its own affairs, the Roman Pontiffs have constantly striven to moderate the aroused passions, exhorting and warning them, so that justice should not be violated through undue delay, nor should any cause, however just, erupt into the flame of sedition through the intervention of cupidity. These measures, indeed, were intended to ensure that the Catholics of Ireland should follow the Church as their guide and leader in all things, and that, conforming themselves to her precepts, they should reject the invitations of corrupt doctrines. Therefore, Gregory XVI, the Supreme Pontiff, on the 12th of March in the year 1839, and on the 15th of October in the year 1844, through the Sacred Council, admonished the Archbishop of Armagh to do nothing except with moderation and justice. We, following the example of Our Predecessor, last year, on the Kalends of

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June, as you know, took care to give all the Bishops of Ireland timely and appropriate warnings. The Irish, hearing these warnings, are to be with their Bishops.

[*Latin ed. p. 250*]

250 Letters are necessary, and in no matter should one deviate from the duties of religion. And somewhat later, in the month of November, several Bishops from Ireland, who had come to Rome to visit the tombs of the Apostles, testified to us that they desired everything for the cause of the Irish; but they also added that it was not permissible to disturb the order. Such a manner of thinking and acting is most in accordance with the institutions and precepts of the Catholic Church; and we do not doubt that it will be beneficial for the reasons of Ireland itself. For we trust in the men who hold the highest authority: in whom, certainly, great experience is usually joined with civil prudence. It will be much safer and easier to achieve what Ireland desires, provided that it uses the way permitted by the laws, and avoids the causes of offense. Therefore, you too, Venerable Brother, and your colleagues in the episcopate here, strive that the people of Ireland, in these very delicate matters, do not transgress the boundaries of equity and justice. We have indeed received more testimonies of obedience and love from the Bishops of Ireland, from the clergy, and from the people: and if, as we are certain, they will now submit to these counsels and to our authority with a docile spirit, then they will truly know that they have fulfilled both their duty and their obligation to us. Finally, we earnestly implore God, that He may mercifully regard Ireland, which desires it; and in the meantime, may the blessings of heaven be with you, Venerable Brother, and with the other Bishops of Ireland, and also with the entire clergy and people. Given at Rome, near St. Peter, on the 3rd day of January, in the year of Our Lord 1881. In the third year of Our Pontificate. LEO XIII, Pope.

[*Latin ed. p. 251*]

25. I. FROM THE CONSISTORY ACTS CONCERNING THE CONSISTORY HELD ON DECEMBER 13, 1880. The Most Holy Father, after delivering the Address which we have reproduced on page 1, section 9, 8 of this publication, proposed the following sees: THE ARCHIEPISCOPAL CHURCH OF CLAUDIANOPOLIS, vacant in certain parts among the infidels, by the resignation of the Reverend Father Dominic Charles Gigli, Titular Bishop of Tibur. THE EPISCOPAL CHURCH OF MYRIN, under the Archbishop of Ephesus, vacant in parts among the infidels, through the death of the Reverend Father Alexis Rameaux, the last Bishop of that see, who died outside the Roman Curia, by the resignation of the Reverend Father Raphael Rachettoni, Titular Bishop of Nursina. THE CATHEDRAL CHURCH OF NURSA, vacant through the resignation of the Reverend Father Raphael Bachettoni, which he willingly relinquished and which was

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completed and accepted by the HOLY FATHER; by the Reverend Father Dominic Bucchi-Accica, formerly Bishop of Lystra. THE CATHEDRAL CHURCH OF SUESSAN, vacant through the death of the Reverend Father Raphael Gagliardi, the last Bishop of that see, who died outside the Roman Curia, by the Reverend Father Charles de Caprio, formerly Bishop of Ganopolis. THE CATHEDRAL CHURCH OF TIBURTINA, vacant through the resignation of the Reverend Father Charles Gigli, which he willingly relinquished and which was completed and accepted by the HOLY FATHER; by the Reverend Father Placido Petacci, formerly Bishop of Troas. THE EPISCOPAL CHURCH OF CARYSTEN, under the Archbishop of Chalcedon, vacant in parts among the infidels, through the death of the Reverend Father Emmanuel Francis Barrutia and Croquer, the last Bishop of that see, who died outside the Roman Curia, by the Reverend Father Vincent Anivitti, a Priest of Rome, who was also appointed as a Suffragan Bishop for the Sabina region, to perform pontifical and other pastoral duties in that city and diocese. He received the sacraments of confession from both sexes, and diligently preached the word of God in many churches of this venerable City, and imparted spiritual instruction.

[*Latin ed. p. 252*]

252 FROM THE ACTS OF THE CONSISTORY: Exercises, or instruction, were provided for young men, first by nourishing them with heavenly food in the pious house near the bridge and at the Esquiline, or for soldiers and those devoted to civil service, at the Janiculum. More advanced studies, and the sacred art of eloquent speaking, were taught in the Pontifical Seminary in Rome, and in the Pio and Urban Colleges of the Propaganda Fide, and through certain books on both sacred and profane learning. Some periodicals, intended to combat the errors and sophistry of the present day, and to foster piety, especially those published by the Most Holy Virgin, were also available. The Director of these endeavors, and the Most Holy Father, having previously relinquished his place among those participating, has now renounced his position from within the innermost chamber.

THE EPISCOPAL CHURCH OF GERMANICIEN, under the Patriarch of Antioch, in lands among the infidels, is vacant, due to the death of the Most Reverend James Francis Kyle, the last Bishop, who died outside the Roman court. This has occurred with the favor of the Reverend Father Gustav Count de Belrupt-Tyssàc, a priest of the Archdiocesan Church of Olmütz. He has also been appointed as an Auxiliary to the Most Reverend and Right Reverend Frederick, Cardinal Priest of Fürstenberg, Archbishop of Olmütz, for pontifical and other pastoral duties, with his consent and willingness, to be carried out in that city and archdiocese, according to the decree of the aforementioned Sacred Congregation of the Consistory, approved by the Most Holy Father. Having been devoted to the care of souls, either as a cooperator or as a parish priest and dean, for many years, he has

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diligently performed the duties of Prelate, Parish Priest, and Archdeacon in the Metropolitan Church of Olmütz. He has also relinquished his position as Dean of the same Chapter, and has been appointed among the Domestic Prelates of the Most Holy Father.

THE EPISCOPAL CHURCH OF NICOPOLITAN, under the Archbishop of Sebastopol, in lands among the infidels, is vacant, due to the translation of the Reverend Father John Mac Donald to the Cathedral See of Aberdeen, with the favor of the Reverend Father Stephen Benedict Paulovich-Lucich, a priest of Macarska. He has also been appointed as an Auxiliary to the Most Reverend Father Mark Calogerà, Bishop of Spalato and Macarska, for pontifical and other pastoral duties, with his consent, to be carried out in the Concatedral Church of Macarska, and in that diocese. Skilled in Italian, Latin, German, Illyrian, and French languages, he has been devoted to the care of souls in Podgora and Macarska as a cooperator for many years. In the Macarska Concatedral Church, he has been honored with the position of Prelate, a position of greater dignity after that of pontifical duties, and has also relinquished his position as General Vicar in spiritual matters for that city and diocese.

THE CATHEDRAL CHURCH OF TORNACEN is vacant, by virtue of the Apostolic Constitution of October 21, 1880, following the death of the last Bishop, Edmund Dumont, with the favor of the Reverend Father Isidore Joseph Du.

[*Latin ed. p. 253*]

FROM HISTORICAL RECORDS, Roussaux, formerly Bishop of Eumene, has been appointed to the CATHEDRAL CHURCH OF CACERES in the Philippine Islands, vacant due to the death of the Most Reverend Francis Gainza, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Father Casimiro Herrero, a priest of the Palencia diocese. Recently ordained to the sacred priesthood, he has commendably exercised himself in ecclesiastical duties. He has previously served as Definitor, Commissary Procurator, and Provincial Vicar of the Order of Discalced Carmelites of St. Augustine in the Philippine Islands, and has recently resigned from his position as parish priest of Tondo in Manila.

The CATHEDRAL CHURCH OF NICARAGUA in Central America is vacant due to the death of the Most Reverend Emmanuel Ulloa, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Father Francis Ulloa and Larrios, a priest of the Nicaraguan diocese, for presentation by the illustrious President of that republic, by virtue of an Apostolic Indult. Born of legitimate, Catholic, and honest parents in Nicaragua, he has surpassed his fiftieth eighth year. He has previously resigned from his position as parish priest of the place commonly called Kandaine, having been appointed by the late Bishop Provisional of Nicaragua, Bernard Pinol and Aycinera, and as General Vicar in spiritual matters.

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The EPISCOPAL CHURCH OF GRA-, under the Archbishopric of Caesarea, in heathen lands, is vacant due to the death of the Most Reverend Paschal Billi, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Father Octavian Mary Sabelli, a priest of the Arianensis diocese, and of the Congregation of the Most Holy Redeemer. He served as a lecturer in Philosophy, Physics, Mathematics, Natural Law, Dogmatic and Moral Theology, Biblical Exegesis, and the Sacred Scriptures, either in his own Congregation or in Asculo at the seminary. He is the founder and director of the pious association of the Daughters of Mary, of Christian Mothers, and of St. Aloysius Gonzaga, and he built the church dedicated to the Immaculate Conception at his own expense. He was also among the synodal examiners of Asculo and the episcopate of Cerignola.

The CATHEDRAL CHURCH OF PICTAVIEN, is vacant due to the death of the Most Reverend Ludovic Francis Desideratus Edward, a Cardinal Priest of the Holy Roman Church, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Father James Edmund Henry Philadelphi Bellot des Minières, a priest of the Poitiers diocese, nominated by the illustrious Monsieur Julius Grevy, President of the French Republic. He has previously resigned from his position as General Vicar for the state and archdiocese of Bordeaux (-Bazas).

The CATHEDRAL CHURCH OF ZAMO-, in Spain, is vacant due to the death of the Most Reverend Bernard Conde and Corral.

[*Latin ed. p. 254*]

254 FROM THE CONSISTORY ACTS of the last Bishop, located outside of Rome, in lands among the infidels, for the care of the deceased, by the favor of the Reverend Father, through the death of the Blessed John Gray, Thomas Belestà and Cambeses Presbyter of Zamora, to the present care of the deceased, by the favor of the Reverend Father Hyacinth Maria Cervera and Cervera, Presbyter of Valencia, of the archdiocese. He was also appointed as a Missionary Auxiliary Apostolic and of the Most Serene King Emmanuel, with the title of Saint Stephen, in the Monte Caelio of the Holy Roman Church. The Reverend Father Salmantine Cardinal Garcia Gil, Archbishop of Caesaraugusta, was chosen as Parish Priest and Rector of the Pontifical University, and, with the consent and will of all, he was made President of the entire Teresian association. For many years devoted to the care of souls, and chosen as Professor of Moral Theology in the Concheusi seminary, he was honored with the dignity of Archpriest of Salamanca, and as Archpriest of the Metropolitan Church of Caesaraugusta, he has been serving until now.

EPISCOPAL CHURCH OF RHABSINEN, under the Archbishop of Amidense, in lands among the infidels, through the succession of the Reverend Father Francis Mac-Neirny to the See of Albano, under the Archbishop of Rhodes, in lands among the infidels, through the death of the Blessed

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Thomas Oliffe, the last Bishop outside of Rome, by the favor of the Reverend Father Thomas Bichi, Presbyter of the archdiocese. He was a member of the Calaritan University College, and was chosen as a Professor of Canon Law, and, as Vicar Capitular for the archdiocese of Arborensi, he performed this duty for many years. He was also honored with the dignity of Archpriest, and, as Archpriest, he directs charitable societies, and was appointed Apostolic Missionary for the dioceses of Hispalis, Gaditana, and Santander, and has performed the duties of Examiner of Synods. He has now renounced this office for the spiritual benefit of that city and archdiocese.

CATHEDRAL CHURCH OF VICTORY, under the Archbishop of Synna, vacant, through the resignation of the Reverend Father Sebastian Herrero and Espi.

[*Latin ed. p. 255*]

FROM the acts of the Congregation of the Missions of Our Lady of the Monserrat, which we have gladly and willingly completed and approved, and with the favor of the Most Reverend Father Mariano Miguel Gómez, until now Bishop of Segorbe, for presentation to the Most Serene King. He, at his own expense, built a monastery for nuns of the Conception, and an asylum for the poor and elderly, and completed the parish church. By a papal brief, the following churches were conferred: The CATHEDRAL CHURCH of Segorbe, vacant, through the translation to the Vicarian See of the Most Reverend Father Mariano Miguel Gómez, with the favor of the Reverend Father Francis of Assisi Aguilar and Serrat, a priest of the diocese of Vich, for presentation to the Most Serene King. Ordained as a priest and having recently received the license in sacred theology, he has diligently performed ecclesiastical duties, especially in preaching the word of God. Having taught ecclesiastical sciences in the seminary of Vich, and being devoted to the studies of the Catholic Association for Spain, he has resigned from his position as Rector of the diocesan seminary of Cordoba. The Reverend Father Theofilo Massucci from Castignano was conferred the church of BRICEN, in the Aegean Sea, as Apostolic Prefect of the Reformed Fathers in Constantinople. The CATHEDRAL CHURCH of TERULEN was conferred, and by letters from the Apostolic See entitled "Ad Vicariam," dated the ninth of September, 1851, the church of Albaracin is united to it, vacant, due to the death of the Very Reverend Father Francis of Paula Moreno and Andreu, the last of those bishops outside the Roman curia, with the favor of the Reverend Father Anthony Ibanez and Galiano, a priest of the diocese of Carthage, for presentation to the Most Serene King. The parish priest and archpriest in the city of Yecla, of the diocese of Cartagena, having resigned after many years, the CATHEDRAL CHURCH of KINGSTON was conferred in Canada to the Reverend Father James Cleary, a parish priest from Dungarvan, in the Diocese of Waterford. The EPISCO-

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PAL CHURCH of HETALONIEN was conferred in the infidel territory to the Reverend Father Enrico Seap of the Congregation of the Most Holy Redeemer, as Apostolic Vicar of Surinam. The EPISCOPAL CHURCH of AURELIOPOLITAN was conferred in the infidel territory to the Reverend Father Ignatius from Villafranca, of the Order of Capuchins, as Apostolic Vicar of the Seychelles Islands. The EPISCOPAL CHURCH of KYRINEN was conferred in the infidel territory to the Reverend Father Benedict from Assisi, of the Order of Capuchins, as Apostolic Vicar of Patnensi. The EPISCOPAL CHURCH of CAPSEN was conferred in the infidel territory to the Reverend Father Augustine Chausse, a student of the Seminary of Foreign Missions of Paris, appointed as Coadjutor with future succession to the Apostolic Prefect of Kouang-Tong in China, the Reverend Father Zephirin Guillemin, Bishop of Cybistrensis in the infidel territory.

[*Latin ed. p. 256*]

256 FROM THE HOLY CONGREGATION OF THE COUNCIL CONCERNING MISSAL OFFERINGS, January 31, 1880. SUMMARY OF FACTS. "Several Bishops in Gallus [Sabandja Su] have obtained an Indult, by virtue of which Parish Priests have the faculty, on certain days when Mass was to be said for the people from elsewhere, to celebrate the Holy Sacrifice according to the intention of the giver of the offering; however, under the condition that the said offering be sent to the Bishops and expended for pious diocesan works determined by the Holy See. Furthermore, since the faithful often offer, for this Mass, an alms, an offering more substantial than the usual one, many Parish Priests claim that it is permissible for them to retain, after sending what is due to the Bishops according to the diocesan tax established, the amount that exceeds this sum; because, they say, there is an extrinsic title for retaining this part of the alms, namely, either extraordinary labor, if the Mass is with singing, or if some journey must be undertaken, or if the Mass has been publicly announced on the preceding Sunday; or, especially, generosity, spontaneously and manifestly given with regard to the person alone. This question has been discussed in ecclesiastical meetings in the Diocese of L., but the question has been presented in different ways. Therefore, the Apostolic See has inquired what should be held in practice. SYNOPTIC DISCUSSION: OBSERVATIONS REGARDING THE LAW. It seems that it can in no way be doubted that Priests, when celebrating, may lawfully receive the offering or alms offered by the faithful. For the Apostle, in 1 Corinthians IX, 18, says: "I know well that no man, while he is in the sanctuary..."

[*Latin ed. p. 257*]

ON THE ALMS OF MISSES 257: Those who work, who partake of what is from the sacristy, and those who serve at the altar, participate with the altar. After this brilliant doctrine of the Apostle has been presented, it is

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not surprising that such a custom or discipline has been consistently accepted by the universal Church. However, it must be noted that the stipend assigned for the celebration of the Mass can be received, not as the price or compensation for the Mass, for that would be a Simonian practice, but as a means for the support of the minister's life. This is taught by both theologians and canonists, as witnessed by St. Thomas, and by Benedict XIV in *De Synod. Dioec.*, book 5, chapter 8. Reiffenst. in *Lib. 5 Decret., tit. 3 De Simonia*, chapter 10, numbers 185 and following. It does not matter whether the priest is rich or poor, or whether he has other means of support. For every worker, whether poor or rich, is worthy of his wages. Hence, Fagnanus in chapter 83 of *Cap. Fraternitatis de sepulturis* says: "The sacred canons do not consider poverty in the assignment of a stipend, but rather the reward for labor, since no one serves for his own wages." However, it must be understood that the reward for labor refers to the labor of celebrating the Mass as an extrinsic, valuable service, and not to the labor itself that is intrinsic to the celebration and inseparable from it; otherwise, it would be Simonian. Argument 6: If someone objects (see 4 q. 3 and chapter *Ad nostram de Simonia*, Amostaz *De Causis Piis*, book 2, chapter 4, number 2, Reiffenst. *Theol. Moral.*, Tract. 5, dist. 2, qu. 4, number 33). Nevertheless, such stipends, over time, have perhaps, due to the unbridled desires of men, provided an opportunity for sordid dealings and countless inconveniences, to which "many most holy laws and decrees have been given by the Church at various times, as can be seen in Benedict XIV, *Instit. Eccl.*, 56, *De Synod. Dioeces*, book 5, chapter 9, *De Sacr. Miss.*, I, 3, chapter 21. But, setting aside all other laws that were enacted in ancient times, it is sufficient in the present day to observe what the Council of Trent decreed in Session 22, *Decret. de observ. et evit. in celebr. Miss.* After these words of the Council of Trent, it should not be surprising that the Roman Pontiffs, at all times, have considered it their supreme pastoral duty to prohibit and condemn everything that is contrary to the dignity of this holy sacrifice.

[*Latin ed. p. 258*]

258 Concerning alms offered at Masses, and their misuse, abuses had again crept in, or which reeked of detestable avarice and shameful gain. First came the celebrated Constitution of Urban VIII, which begins "Cum saepe die 21 Iunii 1625, super celebratione Missarum edita," from which some passages will be useful to extract, which pertain to our matter. Furthermore, in §. 5 of the aforementioned Constitution, the Pontiff, wishing to remove all reprehensible gain from the Church, prohibits any priest who has accepted a Mass to be celebrated, along with a certain alms offering, from assigning the same Mass to another, retaining a portion of that same alms offering for himself. However, since, despite the aforementioned Constitution of Urban VIII, more abuses again arose,

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Innocent XII sought to remedy them, by renewing and confirming the decrees of Urban VIII through an Apostolic Constitution, which begins "Nuper decimo Kalendas Ianuarii 1697 in vulgus editam." Nevertheless, the pursuit of gain, greed, and shameful avarice had progressed to such an extent in past times, that Benedict XIV was compelled, by the Constitution which begins "Quanta cura sub die 30 Iunii 1741 data," to impose ecclesiastical penalties on laymen, and to inflict suspension, which is incurred by the very act and is reserved to the Pontiff, against those priests who, by collecting stipends of a higher price for celebrating Masses, according to custom or the statutes of the place, endeavor to have Masses celebrated, retaining a portion for themselves. To all of this, finally, was added another, most recent Constitution of Pope Pius IX, given on the fourth day before the Ides of October, 1869, which begins "Apostolicae Sedis," from which only the major excommunication was retained, which, since it was broadly issued against those who collect in general, seems to include both laymen and clerics, the penalty of suspension against these priests having been removed, of which no mention is made. It is said there, section 2, number 42: "Those who collect alms of a higher price" for Masses, and who profit from them, by having them celebrated," in places where the stipends for Masses are usually of a lower price." From what has been explained so far, it seems that the stipend or alms offered for a Mass to be celebrated, even if it is very substantial, should be given entirely to him who undertook the labor of the celebration, whoever he may be who celebrates it. The reason for this is given by Pignatelli in *Consult. Canonie*, volume 4, consultation 227, number 7 and following.

[*Latin ed. p. 259*]

ON ALMS OFFERED AT MISSES, 209. THOSE WHICH ARE CONTRARY TO CUSTOM. Having considered these legal precedents, it appears that the practice followed by some parish priests in certain Gallican dioceses, which is contrary to the aforementioned constitutions, is tainted with the vice of simony and cannot, therefore, be tolerated. For it has been ascertained that the Apostolic Indult granted to parish priests, namely, to celebrate Masses according to the intention of the person offering the stipend or alms, was not absolutely and unconditionally granted by the Pontiff, but rather with the condition that the offering made by the faithful should be sent to the Bishops and expended by the Holy See for pious works within the diocese. Therefore, if it is established by law that the entire alms must be given to the celebrant, it necessarily follows that the alms offered for Masses should likewise be entirely applied to pious works, and that the parish priest should not retain any portion thereof. Moreover, the Pontiff, by granting such an Apostolic privilege, did not consider the condition of the parish priests, but had solely in mind the benefit of the pious works existing in those places. Furthermore, it has also

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been ascertained that such celebrations of Masses take the place of those which the parish priests ought to celebrate for the people. Moreover, just as parish priests receive nothing at all from the Masses designated by the Church to be celebrated for the people, so too, sound reason dictates that they should not be able to retain any portion, even the smallest, of the alms offered from Masses celebrated by the faithful. Where the reason is the same, there should be the same disposition of the law. Therefore, having considered these matters both in law and in fact, it seems safe to conclude that this practice cannot be maintained in any way.

THOSE WHICH ARE IN ACCORD WITH CUSTOM. On the other hand, some things are to be noted which are in accordance with custom. It is not to be assumed that a priest, if he entrusts the celebration of a Mass to another, must give the entire stipend offered to him, even if it is considerably larger than usual.

[*Latin ed. p. 260*]

260 CONCERNING OFFERINGS FOR MASSES: The parish priest is obligated to accept the customary offering, unless there is a compelling reason why a portion of the received stipend should be retained by him. However, it is not to be doubted that there can sometimes be extrinsic reasons connected with the celebration itself, for which, if a more generous offering is made than the usual rate, the priest who transfers the obligation of celebrating to another may lawfully retain whatever exceeds that amount; provided, however, that he grants to the priest who celebrates the customary manual offering, according to the custom of the region, or according to a rate established by the Bishop. And this is certainly just, for such reasons are only incidentally connected with the spiritual ministry and are, in themselves, of considerable value. Furthermore, according to the teaching of all writers on ecclesiastical and moral matters, such reasons can be numerous, and can arise from various and diverse considerations in Misses that are sung, or read, or chanted. Indeed, it is often customary to grant a more generous offering, either with regard to the person, that is, because of his dignity, office, poverty, kinship, or gratitude. St. Alphonsus, *lib. 4, tract. 3 de Euchar.*, and in such cases, it seems that the amount exceeding the customary rate may be retained without any fault. This theory, as being in conformity with the sacred canons, has been confirmed on several occasions by the Sacred Congregation, especially in Cologne, on July 25, 1874, concerning Offerings for Masses (1). Indeed, when the Archbishop inquired what should be done with the parish priests to whom are offered alms for sung Masses, either according to the rate established by the Ordinary, or even more generous alms offered spontaneously, whether the priests who take their place should give the entire alms; or whether it is permissible for them to retain a portion for themselves and give a smaller alms to the celebrant? The Sacred Congregation, on the aforementioned

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date, gave the following opinion: "It is necessary to give the entire alms, unless there is moral certainty that the amount exceeding the customary alms was offered with regard to the person of the parish priest." Moreover, besides the aforementioned reasons, others are also cited which are equally considered valuable. For example, when a larger stipend than the customary amount is given in consideration of extraordinary labor, or because it is a Mass (1) This question is found in Vol. VIII, page 75.

[*Latin ed. p. 261*]

ON THE ALMS OF MISSES 261, whether because the singing is too brief, or because the Mass is celebrated too quickly, or too late, or finally, because some task must be performed. Therefore, it is commonly taught by Theologians and Moralists that a priest, who transfers the obligation of celebrating another Mass to another, may retain the excess of the customary stipend for himself; it seems to follow that pastors may retain and are able to retain the excess of the alms of Masses in their parish. Since external reasons for retaining this portion of the alms appear to be present for the pastors, if their trustworthiness is to be ensured in the parish. After considering both of these things, the Superiors have resolved the following question: Whether pastors, having sent to the Bishop the stipend prescribed by the diocesan statutes, are able to retain the excess of the alms of Masses in this case. RESOLUTION. The Sacred Congregation, on January 31, 1880, decided to respond: Negatively, unless there is moral certainty that the excess of the common alms was offered with the intention of benefiting the person, or for greater labor or inconvenience. FROM WHICH YOU MAY GATHER: I. That no one serves with his own stipends; therefore, those who work in the sacristy consume what is of the sacristy, and those who serve at the altar participate in the altar. II. This custom, which allows priests, while performing sacred rites, to receive alms offered by the faithful, not as a price for the Mass, but as a means for the support of the minister's life, is consonant with the teaching of the Apostle Paul. III. However, the insatiable greed of priests has, over time, caused these stipends to provide an opportunity for countless inconveniences or sordid dealings, which have harmed the dignity and sanctity of the sacrifice. IV. The Roman Pontiffs and Councils have repeatedly condemned whatever is harmful to charity or to base gain, with regard to the alms of Masses.

[*Latin ed. p. 262*]

262 CONCERNING ALMS OFFERED FOR MISSES

V. Hence, it has been strictly prohibited for a priest who has accepted a Mass to be celebrated with a certain alms, to entrust the celebration of that same Mass to another, retaining a portion of that same alms for himself.

VI. For priests who receive alms do not acquire them except by reason of

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the obligation to offer the sacrifice, as being connected with it; and therefore, by transferring the obligation to another, they also transfer the right to retain the stipend to that same person.

VII. It is also easily understood that those who retain a portion of the stipends act contrary to the will of the giver, who wished that the stipend, given with a view to the burden [of the Mass], should pass with that burden and belong to him who fulfills that burden.

VIII. Since the entire stipend is due to the celebrant by right, it follows that alms offered for Masses should be applied entirely to pious works; for the Pontiff had this privilege in mind solely with regard to these alms, and not at all the condition of the parish priests.

IX. Therefore, parish priests, when celebrating Masses which are in place of those which they ought to celebrate for the people, cannot add any portion of the stipends to themselves, unless they are morally certain that the excess of the common alms has been given for some other reason, entirely apart from the external celebration, namely, with a view to the person of the parish priest himself.

[*Latin ed. p. 263*]

263 FROM 8. DECREE OF THE CONGREGATION OF INDULGENCES CONCERNING THE REGISTRATION OF MEMBERS IN PIOUS ASSOCIATIONS OR CONFRATERNITIES. OBSERVATIONS FROM THE OFFICE. In order that nothing might be lacking for the explanation of the matters proposed, concerning the registration to be made in the records of Confraternities and pious Associations, the following was noted by the Office, among other things: The Roman Pontiffs have always been concerned about Confraternities and other pious associations. Indeed, they have approved both those local to a single town and those general, pertaining to all the faithful, and have granted them indulgences. With regard to this, many prescriptions were made through the Constitutions of Clement VIII, so that pious sodalities might correspond to their intended purpose and grow. However, after the promulgation of these Constitutions, grave abuses began to appear in some sodalities. Thus, Confraternities, established for specific locations, would presume to receive members who resided in other regions, and who could not be registered in order to obtain the benefits of indulgences. The matter being reported to the Supreme Congregation of the Inquisition (1), the aforementioned abuses were condemned, and the registrations themselves were declared invalid. (1) The Sacred Congregation of the Inquisition, on November 17, 1689, declared certain registrations of confreres and associates to be null and void, because the Confraternity under the invocation of the Blessed Virgin Mary, erected in the parish church of Saint Peter in the town of Monachii, was registering all the Christian faithful, residing in various places, contrary to the express intention of the Pontiff, as stated in the aforementioned Brief, in which

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the principal indulgences granted to the confreres and associates of that Confraternity are read, namely, that on certain days of the year, those who devoutly visit the aforementioned parish church in the town of Monachii. The same Congregation condemned and disapproved of this, and through another decree of July 12, 1703, addressed other Confraternities erected in Oeniponti, Taurini, and in the State of the Holy See.

[*Latin ed. p. 264*]

264 CONCERNING ADMISSION: With the passage of time, other customs, entirely to be condemned, began to arise. For some directors of sodalities, although they themselves possessed the authority, by law granted to them, to admit members, delegated others to perform this same duty, without receiving any such authorization. To abolish these customs, at various times, the Sacred Congregation of Indulgences issued certain letters, in order to bring the directors back to the observance of the Clementine Constitution. (1) But nothing had yet been decided concerning the cause of those absent, in these deliberations, except for the decree issued in the newly established Kingdom of America, on April 28, 1761. Therefore, in order to provide a remedy and to prevent future controversies and abuses, it was decided to require that those who wished to give a name to sodalities should personally apply to the director of the sodality itself. Hence, a decree was issued on April 13, 1878 (2), which reaffirmed the resolution of April 28, 1761, in America; so that this general decree could be maintained for all properly called confraternities. (3) However, it does not seem equally clear whether the pious unions, or certain pious societies, which cannot in any way be considered true confraternities, remain subject to the same restriction of this decree. The following points should be considered against this view. Although confraternities and pious unions are sometimes called by the same name, one institution, in many respects, is distinguished from the other. Confraternities constitute a single body, which is governed by certain laws, whether concerning the admission of members, or concerning the meetings to be held, or concerning the duties to be performed according to certain guidelines. (1) The Sacred Congregation of Indulgences issued letters on March 20, 1871, to the director of the sodality established in Paris, under the title of the Immaculate Heart of Mary; and on April 2, 1871, it issued other letters to the Bishop of Burgos, so that the abuse of appointing promoters without due authorization might be eliminated. (2) See the decree of this kind in Vol. XI, page 157. (3) The cause of the re-establishment of this decree was what was happening in the arch-sodality of Our Lady of the Most Holy Heart in the diocese of Bourges. For the rector, to whom the authority had been granted to admit the faithful and to incorporate other sodalities, only in the aforementioned diocese, was accustomed, both by himself and by others whom he designated, to admit members and to make incorporations in various places, outside the diocese. From this, discord

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arose between this sodality and another of the same name established in the city, which was endowed with greater authority.

[*Latin ed. p. 265*]

CONCERNING ADMISSIONS 265 times and places; whereas, on the contrary, nothing of this kind is found in pious unions, in which the members have only this purpose: to participate in Indulgences, and other spiritual graces, by performing certain acts of piety, or even simply by reciting assigned prayers. However, shortly after the decree was promulgated, many Bishops, and others, with the favor of the Bishops themselves, considered it necessary to appeal to the Holy See. And speaking about the pious unions, they stated, according to their judgment, that the good of these unions could no longer be promoted, if the personal presence were required for admissions by force of the decree. They also added that, in some cases, a certain loss and even the ruin of these pious unions should be feared, unless they are exempted from the observance of the decree, either by way of exception or by dispensation. Those who presented petitions for properly called confraternities, which, however, can also admit members in distant regions, affirmed that, with the decree in force, these confraternities have already suffered a partial loss. Therefore, almost all requested that the use of admitting members by letter, which had been customary, might be maintained by dispensation. Therefore, after considering the petitions, it seems that the cause of this decree has led to such inconveniences, which not only hinder the growth of pious institutions, but also put their very existence in danger. It should also be remembered that several concessions and declarations have already been made, especially with regard to pious unions. By a papal Brief of March 6, 1879, an Indult was granted to the Pious Union, which bears the title "Sainte Ligue du Voeu national," to admit absent members permanently. And the "Opus Propagationis Fidei," by a letter from the Eminence of the Prefect of June 18, 1879, was declared not to be bound by this decree. (1) With these things stated, the following points were to be examined: I. Whether the decree of April 13, 1878, prohibiting (1) You have these letters Vol. XII page 430 har. ephem. insert.

[*Latin ed. p. 266*]

266 Regarding the enrollment of absent persons, extend this to pious unions and to pious works, which are distinguished from true confraternities. II Whether and how, after the aforementioned decree has been issued, the enrollment of absent members should be approved or permitted, when it concerns confraternities of the true name. III What should be answered concerning the petitions presented by the moderators of confraternities, especially by bishops, who request, notwithstanding the decree, that the aforementioned absent persons be enrolled in these confraternities, either by letters or through an intermediary, either due to custom, or due to new

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reasons derived from experience. IV What else should be prescribed in this case. The Sacred Congregation of Indulgences, on June 14, 1880, considered it necessary to provide for the doubts raised through the following instruction: Declaration for the City and the World concerning the Decree of April 13, 1878, regarding the non-enrollment of absent persons in pious societies. Since the enrollment of the faithful in pious societies is, in itself, an act of religion and piety, to such an extent that the day on which a faithful person is enrolled in a particular pious society is often enriched with Indulgences by the Holy See, it is entirely fitting that this enrollment be carried out seriously and devoutly, in a certain manner, and with due form. Although, for this, personal presence is not necessarily required in itself, since even the most important affairs can be concluded between absent parties by letters or through an intermediary, nevertheless, personal presence is required by the general rule of law, so that consideration may be given to devotion rather than to numbers, and so that a way may be closed to many abuses. This general rule has been indicated by this Sacred Congregation in the Spanish New Kingdom on April 28, 1761, and most recently reaffirmed and confirmed by the Decree for the City and the World of April 13, 1878. But, while generally remaining in its full force, several exceptions may certainly occur, or from the particular constitution of certain confraternities, which by their very nature constitute an exception.

[*Latin ed. p. 267*]

Regarding the granting of indulgences, it appears, either due to special privileges of certain groups, or due to external circumstances, or due to a benevolent apostolic dispensation, that many doubts and, indeed, many petitions for a favorable exception to this sacred Congregation of Indulgences have been presented. After carefully considering all of these matters, the Most Reverend Fathers presiding over the Sacred Indulgences, in a general Congregation held in the Apostolic Palace at the Vatican on June 14, 1880, decreed: "Maintaining the decree of April 13, 1878, provision must be made for the doubts and petitions presented through a specific Instruction and a detailed Declaration, in accordance with the opinion expressed by the Most Reverend Fathers in the aforementioned Congregation, regarding appropriate exceptions."

I. Therefore, in accordance with the opinion of the Most Reverend Fathers, a distinction must be made between sodalities established for the entire Catholic world, and those established only for a specific diocese or region, with regard to which the faithful who reside outside the geographical limits of the sodality are considered absent, and indeed, can even be considered extraneous. Such local sodalities, as, for example, the Brotherhood of the Blessed Virgin Mary of Guadalupe, which is mentioned in the New Kingdom of Spain, cannot admit as members those who are absent from the limits of the sodality; and this is the first meaning of the afore-

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mentioned resolution of the Sacred Congregation of April 28, 1761, and this first meaning declares that admissions of absentees, both by the decree of the City and the World of April 13, 1878, and by the present Instruction, are entirely subject to the general law, without any new exception.

II. Even universal sodalities, with regard to which there are no absentees or extraneous members in the first sense, cannot admit simply absent individuals as members; rather, the law requires the personal presence of those to be admitted. However, it was not the intention of the decree to restrict this to the place where the sodality is canonically established for...

[*Latin ed. p. 268*]

268 CONCERNING the inscription, the primary seat and center [of a religious order] is required; but the presence of those to be inscribed suffices before anyone who legitimately possesses the faculty to inscribe, whether delegated or sub-delegated in any place: it does not suffice, however, that there be a moral, interpretative, or representative presence by letter or in any other way, even through interposed persons; and here is another meaning by which inscriptions of the absent, according to resolutions in America and according to the aforementioned decree, are invalid, and which, although invalid by general law, are declared to be so with the following exceptions. III Although, generally speaking, laws relating to the granting of common Indulgences for any Society have been established, especially in the Constitution of Clement VIII, *Quaecumque*, yet relating to the law concerning the non-inscription of the absent and its exceptions, it is fitting to distinguish between Societies which can be called Colleges in the stricter sense, as are most proper-named Confraternities constituted as an organic body; and Societies which are joined together by a looser social bond, as are many Confraternities and most pious Associations, Congregations, Aggregations, Unions, and pious Works, as they are called. Among the many distinctions which are not relevant to the present purpose, and which it is not easy to investigate more accurately, it is most important to note that Colleges, or proper-named Confraternities, and Societies which are more closely related to them in their organic constitution, often, according to their own laws for the inscription of members, have some specific form with some solemnity and rite, such as a public petition and presentation of candidates, some kind of examination, and novitiate, or at least the imposition of the habit, scapular, and cincture, which require personal presence by their nature. Therefore, for such Societies of whatever name, no general and ordinary exception is granted by this declaration from the law concerning the non-inscription of the absent: only their Moderators and their Delegates are permitted to dispense in particular cases.

[*Latin ed. p. 269*]

ON ADMISSION 269: It is permitted, according to the established form

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among the present, and even among those absent, to admit individuals either through a special or extraordinary exception. IV. Furthermore, for Sodalities, pious Unions, pious Works, and any Society of whatever name, which do not have a form and ceremony for the admission of members among the present, the decree concerning the absent should be observed as much as possible; and rather, the admission of the present should be made easier and promoted as far as possible, by multiplying canonically the centers of association and by increasing, as opportunity arises, the number of those who are called Promoters, Promotresses, or by any other name, so that they may have the power, according to the approved laws of the Sodality, not only to promote enrollments, but also to delegate the task of admission. But since this cannot always be done, nor everywhere, and it is clearly not sufficient, it seems fitting that, with apostolic benevolence, those who cannot conveniently be present should not be entirely excluded, but that, even if absent, they may be discreetly admitted through letters, or through intermediaries who represent them, while at the same time avoiding abuses for which the requirement of a present witness is most necessary. Therefore, since the strength and usefulness of many Societies and pious Works of various names depend greatly on the number of the faithful who are associated in various exercises of piety and charity, so that the condition of presence should not be an obstacle to the flourishing of these Societies, and so that many faithful people of good will should not be hindered from receiving the benefits of enrollment contrary to the intention of the decree, the Holy Congregation, having considered the requests of many Sodalities and especially of Bishops, declares by this present Declaratory Decree, with a broad exception from the letter of the law, by apostolic authority, that even those who are absent may be admitted to such pious Associations, provided that the spirit, intention, and purpose of the decree are observed, namely, that not only the number may be increased, but also that consideration be given to the devotion of those being admitted, not by collecting names rashly, lightly, and in large numbers, but discreetly, so that, as far as possible, only those who are absent in body, but present in spirit, are enrolled.

[*Latin ed. p. 270*]

270 CONCERNING ADMISSION: Those who, moved by the Holy Spirit, knowingly and willingly desire to be admitted to the pious Society, intend to fulfill its works and to gain Indulgences. V. Furthermore, there are special exceptions, either because of the statutes of certain Societies, which seem to include, presuppose, or even urge the admission of absent members; or because of privileges; or because of the singular devotion of the faithful, who directly send their names to certain sanctuaries or centers of the Societies; or finally, because of various circumstances pertaining to Societies, individuals, places, and times, some of which have already been

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declared, or have been granted for a time, so that it is not necessary to enumerate them individually; all of these are included, considered valid, confirmed, and expanded, by this benevolent interpretation and practical declaration of the decree. This instruction and declaration of the Sacred Congregation were benignly approved and ordered to be promulgated by the Most Holy Pope Leo XIII, in an audience held on November 26, 1880, by the aforementioned Cardinal Prefect of the same Congregation, and after previously rectifying any actions that may have been taken, the decree of April 13, 1878, is to be observed henceforth in accordance with this present benevolent interpretation and practical declaration. Given from the Secretariat of the Sacred Congregation for Indulgences and Sacred Relics, this day, November 26, 1880. ALOISIUS CARD. OREGLIA, Prefect from St. Stephen. Pius Delicati, Secretary. FROM WHICH IT MAY BE GATHERED: That, according to the resolution of the Sacred Congregation for Indulgences of April 28, 1761, the decree of April 13, 1878, and this present declaration, the admissions of the Christian faithful are declared invalid.

[*Latin ed. p. 271*]

I. Concerning the enrollment of those dwelling outside the boundaries of the Diocese, in which a local sodality is established. (1) II. Regarding universal sodalities, the personal presence of those to be enrolled is still required; however, those who are unable to attend may, through the moderator of the sodality or other delegated or sub-delegated individuals who possess the authority to enroll, in various centers, obtain enrollment. III. No exception shall be granted from the general law regarding the non-enrollment of the absent, with regard to sodalities of this specific name, which can be more strictly called colleges; and this applies to those whose nature requires the presence of candidates who must undergo probation or novitiate, or who must receive a scapular, habit, or other religious garment. IV. Nevertheless, by virtue of this instruction, moderators and delegated individuals of these specific sodalities, whatever their name, are granted the power to dispense from the established form in particular cases, and to enroll the absent properly, even through extraordinary exceptions. V. Regarding other sodalities, for which there is no ceremony for enrollment among the present, it is necessary to increase the number of centers and individuals who possess the authority to enroll, so that the force of the decree may remain, as far as possible. VI. Whenever the increase in the number of centers is not sufficient for the work, it shall be permitted, by Apostolic benevolence, that those who are unable to be conveniently present may be enrolled through letters, or through interposed individuals, so that faithful people of good will may not be deprived of the benefit of enrollment, contrary to the intent of the decree. VII. Through such a declaration, all special exceptions, which seem to include the enrollment of the absent, are declared null and void, whether they are based on the approved statutes of

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certain sodalities, on privileges, or on additions to sodalities, individuals, places, and times. (1) The reason is because this would be contrary to the expressed intent of the Pontiff in the decree of erection; in which favors and indulgences are granted to certain and specific individuals residing in the place where the sodality is established. Therefore, the faithful residing outside the boundaries of the local sodality, and indeed those who are absent, but are considered strangers, are related to obtaining indulgences.

[*Latin ed. p. 272*]

272 APPENDIX V. CONTAINING FURTHER DECREES OF THE HOLY CONGREGATION OF RITES FROM CASALE. Furthermore, in the pious document with which the Reverend Father Philip Bottero charged the Sodality dedicated to the Immaculate Conception of the Blessed Virgin, located in the City and Diocese of Casale, so that it might retain its rights in all and each of the goods of which it was made heir by testament, it was also stipulated that, in the church of that very Sodality, the Feast of the Conception should be celebrated each year with music. However, a controversy recently arose between the aforementioned Sodality and another, dedicated to the Most Holy Trinity, concerning whether the former had fulfilled the stipulations of the pious document by using music in this feast, namely, a full orchestra, or only an organ and other musical instruments. When this controversy was brought before the Holy Congregation of Rites, the same Holy Congregation, after hearing the report made by the undersigned Secretary, and after carefully considering the rights presented, decided to respond as follows: Having considered the testimony of the Bishop, it was deemed that the will of the testator had been sufficiently fulfilled in this case. And thus it was written and declared on April 27, 1877. GORITIEN. Perillis. and Riñe Dñe, as Brother. The following letters were received by the undersigned Secretary of the Holy Congregation of Rites from Your Eminence, dated February 5 of the current year in Gorizia, in which Your Eminence explained how you had acted in organizing the functions of Holy Week, and in what manner and with what intention you had prohibited the pious exercise of the Via Crucis during the major week. After carefully considering all matters, the same Holy Congregation decided to communicate the following to Your Eminence: That passage in the Instruction of February 17, 1876, in which the solemn exercise of the Holy Way of the Cross is prohibited during the major week, truly appears to be as if it were alien to the spirit and functions of Holy Week, and does not shine with such a clear meaning as to preclude all access to a broader interpretation, which in this matter can either not be admitted at all, or can be admitted with great difficulty. Therefore, it is to be hoped that, given the opportunity, the meaning expressed in your last letter of February 5,

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1877, will be clarified.

[*Latin ed. p. 273*]

APPENDIX V. Let it not omit, even within the context of the Instruction itself, to clearly explain everything in order to remove all danger of ambiguity. It is also to be hoped that the Instruction will diligently consider and include the following words: "This tomb can best serve for placing within a separate capsule of the same tomb, the Blessed Sacrament, and other hosts contained in a pyx." Indeed, it has been determined that on the Feast of the Lord, the chalice with the consecrated host, reserved for the following day, is placed only in the capsule (See the Rubrics of the Mass for that Feast), and not the consecrated hosts contained in the pyx, which are usually placed and kept elsewhere, in a suitable and fitting place. Rome, May 4, 1877. Perilli. And to the Most Reverend Archbishop of Gorizia (1). VIVARIEN. The Most Reverend Bishop of Vivar, humbly requested a solution to the following doubt from the Sacred Congregation of Rites: Can images, or statues of the Lord, showing His Most Sacred Heart, of the Blessed Margaret Alacoque, be publicly venerated, as is already the case in many places in his Diocese, before her feet? This doubt, which the undersigned Cardinal Prefect presented today at the Vatican in the Ordinary Meetings of the Sacred Rites, was considered by the Most Reverend Fathers presiding over the Sacred Rites, after hearing the opinions of another of the theological consultants, and the Most Reverend Assessor, after mature deliberation, and it was decided to respond: Negatively, according to the decision of the Holy See, in accordance with the Decree of Pope Alexander VII, dated September 27, 1659. And thus they responded and ordered it to be observed, on May 12, 1877. RATISBON. The Knight Frederick Pustet, Printer of Ratisbon, wishing to publish a new edition of the Roman Missal, humbly requested a solution to the following doubts from the Sacred Congregation of Rites: DOUBT I. In the last verse of the Tract for the Feast of the Annunciation of the Blessed Virgin Mary, on March 25th, it is read: "They shall be led into joy and exultation: they shall be led into the temple of the King." Since this Tract is the same as the Tract from the Mass "Deus misereatur," concerning the Virgin, it seems that it should be read: "They shall be carried in joy, etc." DOUBT II. On the Sixth Day after the Sunday of the Passion, in the Secret of the Mass of the Seven Sorrows of the Blessed Virgin Mary, it does not seem to be read: "May the communion of her and her saints be multiplied under the cross by your most pious intercession;" but rather: "May the communion of her and her saints, etc." DOUBT III. In the Order of the Mass, after the Lavabo, in the Prayer: "Receive, Holy Trinity," some more recent rubricists say that the word "receive" should be omitted (1).

[*Latin ed. p. 274*]

274 APPENDIX T. Concerning what ought to be read in honor of the

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Blessed Virgin Mary, ever Virgin: Concerning the honor of the Blessed Virgin, ever Virgin. Should these opinions be followed, and should this correction be made in this place in the Missal?

"DOUBT IV. The Feast of the Dedication of the Basilica of the Most Holy Savior on November 9th is listed among the feasts in which the 'Credo' is recited, in the General Rubrics of the Missal (Title XI, concerning the Creed). Should the following rubric be added to this feast: 'And it is said: Credo,' as is done in the Feast of the Dedication of the Basilica of the Holy Apostles Peter and Paul on November 18th?

DOUBT V. Among the various blessings found in the Missal, the blessing of the place concludes with the words 'now and for all ages of ages.' However, in the Ritual approved by the Sacred Congregation of Rites, the conclusion reads: 'now and forever.' Which is the more correct?

DOUBT VI. In the Mass of Saint Boniface, Bishop and Martyr, should the following be added to the body of the Mass: that instead of the reading from the Book of Kings, the reading from the Book of Wisdom be substituted?

The same person also requested that the following doubts concerning ecclesiastical chant be resolved, since the masters of chant often disagree greatly on this matter:

DOUBT I. Is it permissible to sing the 'Gloria in excelsis' and the 'Ite Missa est' in the tone of the Blessed Virgin Mary, both during the Octave of the Nativity of the Lord and during the Octave of Corpus Christi, as is argued by some based on the Roman Gradual and the Sacred Congregation of Rites?

DOUBT II. And if so, is it permissible to sing them only during the Feast of Saint Stephen the Protomartyr, Saint John the Apostle and Evangelist, and during the feasts within the Octave of the Nativity, just as is done during all the feasts within the Octave of Corpus Christi?

DOUBT III. And if so, is it permissible, in general, to sing the 'Gloria in excelsis' and the 'Ite Missa est,' whenever the Preface of the Nativity of the Lord is said, in the tone of the Blessed Virgin Mary?

The Sacred Congregation, after mature and careful consideration, decided that the following should be written:

To I: "Read with joy."

To II: "Read: suo."

To III: "Read: in honorem."

To IV: "Read: and it is said: Credo."

To V: "Read: now and for all ages of ages."

To VI: "In the Mass of Saint Boniface, for the reading: the reading from the Book of Wisdom."

Regarding the doubts concerning chant, it was decided that the follow-

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ing should be affirmed:

To I, II, and III: Affirmative.

And so it was written on May 25, 1877.

ALBINGANEN.

To the Most Reverend Lord, as a brother,

I present to this Sacred Congregation of Rites the situation in the Diocese of Albinganen, as follows:

Due to either the multitude of sacrilegious thefts, or the poverty to which almost all the churches in the diocese have been reduced, the administrators of the parishes have not only been permitted, but even encouraged, to use sacred vessels made of metal of any kind, provided that they are solid, and that the chalices, patens, and pyxides are...

[*Latin ed. p. 275*]

IX. The chalices within were entirely gilded with gold. When, however, from the reply which Your Eminence asserts was given on March 20, 1876, to the Most Reverend Bishop of Asti, it appears that the chalices in question must either be entirely of gold, or at the very least, have cups lined entirely with gold; Your Eminence, considering the circumstances and especially bearing in mind the poverty of the churches, requested that either the churches of his diocese be permitted to continue to acquire chalices whose cups are made of gold-bronze or copper, or at least that the use of chalices already purchased in those churches be permitted to continue without any time limit. The Sacred Congregation, having heard a report of this request made by the undersigned Secretary, replied as follows: "Let the Decree be communicated to the Most Reverend Bishop in Rome on this day, March 16, 1876." (1) Rome, May 28, 1877. To the Most Reverend Brother Bishop of Albenga. The Master of Ceremonies of the Bishop of Arezzo, when the Bishop solemnly celebrates Vespers, is accustomed to distribute the antiphons according to the order prescribed in the *Ceremoniale Episcoporum*. The fourth antiphon, however, is intoned by the first canon, who remains in the choir on the Gospel side, and the Episcopal seat is located on the same Gospel side and is united with the seats of the canons. The Master of Ceremonies of the Chapter of the church of Saint Mary in the same city believes that the fourth antiphon should not be intoned by the first canon remaining in the choir on the Gospel side, but by the second canon remaining in the choir on the Epistle side; because the antiphons are to be intoned by those who occupy a more distinguished place in the choir, and because in this intonation of the antiphons, the place is considered, not the person. And this second Master of Ceremonies believes that after the Episcopal seat, as mentioned above, the first place in the choir is on the Epistle side, not on the Gospel side. To resolve this question, two doubts were proposed to the Sacred Congregation of Rites, namely: DOUBT I. What is

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the first place in the choir in the cathedral church after the Episcopal seat? DOUBT II. By which first canon should the fourth antiphon be intoned at Vespers solemnly celebrated by the Bishop, either by the canon remaining on the Epistle side, or by the other canon remaining on the Gospel side? The Sacred Congregation, having heard a report of this matter made by the undersigned Secretary, decided that the doubts should be answered as follows: To I. The first place in this case is that which immediately follows the Episcopal seat. To II. By the first canon of the more distinguished or senior members. And thus it was written or ordered to be observed on June 19, 1877. (1) You have this decree, Vol. VIII, page 425, given on March 20, 1875. The document to be added to the collection was given on March 16, 1876.

[*Latin ed. p. 276*]

276 DOCUMENTS RELATING TO THE ENCYCLICAL CONCERNING THE BULGARIANS AND SLAVS. (1) Since the Encyclical Letter of Our Most Holy Father Leo XIII concerning the Bulgarians and Slavs is replete with treasures of doctrine and history, we have considered it fitting to allude to certain Pontifical documents from which this Encyclical Letter may be further illuminated, and which, if possible, may shed even greater light upon it. Learned men may connect these notes with the letter or use them for other studies.

3 Patrology, Migne, Vol. CXIX – page 978. RESPONSES OF POPE NICHOLAS I TO THE BULGARIANS. To your inquiries, few things need to be answered, nor did we deem it necessary to linger over each one, since, by the grace of God, we have sent suitable messengers to your homeland, who, as time and reason dictate, will instruct you on each matter, and we have also sent them the necessary books; and we have entrusted to them now the following:

1. Concerning the necessity of faith for salvation.

2. Concerning marriages between those who are related by blood, which are not to be entered into.

3. Concerning the ceremonies of the sacrament of marriage, which are not necessary, provided that the essential mutual consent remains.

4. Concerning fasts.

5. Concerning abstinence from meat on Saturdays.

6. Concerning baths, which are not prohibited on Saturdays and Thursdays.

7. Concerning the Cross, which must be borne with reverence.

8. Concerning kissing and bearing the Cross during Lent.

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(1) You have this Encyclical in Vol. XIII, page 145, of the *Acta*.

[*Latin ed. p. 277*]

DOCUMENTA 9 10 11 12 13 14 277 Concerning Communion to be received during Lent. Concerning abstinence from labor on the Lord's Day. Concerning other feasts on which labor should cease. Concerning judgments not to be exercised on a feast day. Concerning the civil law. He condemns the act of cutting off the nose and ears of a certain Greek, who falsely claimed to be a priest. 15 Concerning the validity of baptism conferred by the same false priest. 16 Concerning the penance to be performed because of the cutting off of the nose and ears of the aforementioned. 17 Also, concerning obtaining forgiveness for the exceedingly cruel act committed against Christian rebels. 18 Concerning heretics who are not to be persecuted, but rather restrained and converted. 19 The King shall judge the rebels and conspirators. 20 Those who depart from the country are not to be condemned. 21 Mercy should be shown to a slave returning from flight. 22 Punishment with mercy should be given to soldiers fleeing before the enemy. 23 Also, to those who refuse to advance against the enemies. 24 The guilty are to be punished according to the laws, with due reverence for ecclesiastical immunity. 25 Guards who are sometimes negligent are not to be punished with death. 26 Also, murderers are to be punished according to the law, with due reverence for ecclesiastical immunity. 27 Also, concerning other murders. 28 Adulterers are to be punished according to canon law. 29 Also, concerning other sins of the flesh. 30 Whoever involuntarily kills another shall be judged by the Bishop. 31 Concerning the treatment of thieves of animals according to the laws. 32 Also, concerning the abductors of men or women. 33 In war, it is fitting to carry the banner, rather than a horse's tail, bearing the sign of the Cross. 34 On very solemn days, no battle should be engaged in, unless extreme necessity demands it. 35 When proceeding to battle, the Mass should be heard, rather than resorting to incantations or divinations, which are of the devil.

[*Latin ed. p. 278*]

278 36 37 38 39 40 DOCUMENTS. On the Sunday, no battle shall be engaged in, as stated above. The books requested will be sent. In the camp, let prayers be offered for victory. Concerning marriage between blood relatives, it is to be avoided. Those who have been slow to prepare arms and horses for the war shall not be punished by death, but rather, arms of Christ should be acquired.

41 If they refuse the Christian faith, they should be brought to it not by force, but by admonitions and exhortations.

42 The King may eat alone, or with others, as he pleases; however, humility is encouraged.

43 All animals that are permitted to be eaten may be consumed.

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44 It is preferable to abstain from hunting during Lent.

45 During Lent, it is permissible to administer justice, but prayers should not be omitted.

46 It is also not fitting to travel during Lent without necessity.

47 Nor to jest.

48 Nor to celebrate weddings.

49 Whatever was done before baptism may be continued, provided it does not contradict the laws or the Christian faith.

50 The Bishop shall judge concerning sins committed in marriage.

51 It is absolutely forbidden to have two wives.

52 The law prohibits anyone from being castrated.

53 When a priest is absent at the table, it is good to place a cross there.

54 It is not commanded to have the hands joined in the Church.

55 It is permissible to approach Holy Communion with a cincture (belt).

56 It is permissible to pray and fast for fair weather or rain.

57 It is permissible to eat animals killed by eunuchs.

58 A woman should have her head covered in the Church.

59 Female garments of any kind may be worn.

60 On the day of fasting, it is not customary to eat anything before the third hour.

61 It is always necessary to pray, but no hour of the day is prescribed for laypeople.

62 The virtue of healing of a certain stone is uncertain, and therefore, it should be rejected.

63 On a feast day, the use of marriage is permitted, but it is better to abstain.

64 A man should abstain from his wife as long as the child is being nursed.

65 It is not permissible to receive Holy Communion unless preceded by fasting.

[*Latin ed. p. 279*]

DOCUMENTA

27

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66. It is not fitting to wear a head covering (turbante) within the church.

67. An oath should be taken in the name of God, and not by the sword.

68. A woman is permitted to enter the Church after childbirth.

69. Baptism should be administered solemnly twice a year, but always in times of necessity.

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70. Priests, even if married, are to be venerated.

71. Priests are not to be judged by the faithful.

72. The bishop should temporarily hold the place of the Patriarch.

73. Your bishop should be consecrated in Rome, or at the very least, should receive the pallium.

74. Prayer is to be completed in whatever place.

75. The power of absolution is granted to bishops, along with the code of laws.

76. Also, the book of the Mass.

77. Vain observances are to be rejected.

78. Enemies are to be received into penance.

79. Superstitions concerning the sick are to be prohibited.

80. Peace is to be strengthened with those who seek peace.

81. Faith is not to be given to those who break faith, even to a Christian; but the bishop should be consulted.

82. A pact can be entered into with pagans in civil matters.

83. A cleric is not to be judged by secular authorities.

84. A false accuser should be punished mercifully.

85. Also, concerning one who administers poison.

86. In the examination of an accused person, torments should not be used.

87. The monastic life should not be imposed.

88. No prayer should be offered for the dead who are unbelievers.

89. Offering first fruits to God is an ancient custom.

90. Animals, whatever the manner in which they are slaughtered, may be eaten.

91. If an animal is slaughtered by an unbeliever, a Christian may eat it, provided that it does not appear that he is participating in his practices.

92. There are three true Patriarchs: the Roman, the Alexandrinus, and the Antiochenus; the Constantinopolitan and the Hierosolymitanus, however, are only called Patriarchs by the favor of princes, and only nominally.

93. After the Roman See, the Alexandrinus is first.

[*Latin ed. p. 280*]

280 DOCUMENTS 94 The chrism is not to be taken only from the Greeks. 95 The immunity of the Church must be observed. 96 A woman, even if she is an accuser, must not be rejected. 97 Likewise, a slave. 98 A suicide must be buried, but prayers should not be offered for him. 99 Even if he is a Christian: because prayer is of no benefit for the damned. 100 One who has died in battle can be buried honorably, and prayers can be offered. 101 Alms must be given to the poor, especially to the pious. 102 A pagan

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should not be made a Christian by force. 103 Evil books should be handed over to the fire. 104 A baptized person baptized by Hebrews should not be rebaptized. 105 The laity should not judge about the doctrine of the Church. 106 You must adhere to the Apostolic See; listen to our messengers, setting aside others, whether Greek or Armenian, etc.; in cases of doubt, you must appeal to the Roman See. But when, by the grace of God, you have a bishop through the ministry of our see, he will teach you all things, and if there are things that he does not understand, he will receive them from the authority of the Apostolic See. And may God, who has worked such great salvation in you, perfect, consolidate, and establish it until the end, and strengthen it. Amen. Migne, Patrology – Vol. CXXII, page 1309. LETTER OF POPE ADRIAN II To Basil, Constantine, and Leo, Emperors (Year 871), Ides of November. Concerning the fact that the messengers of the Apostolic See, after many dangers, barely escaped naked. He condemns the fact that Ignatius dared to consecrate a bishop among the Bulgarians, etc., page 1311. Of the same, To Ignatius, Archbishop of Constantinople (Year 871). He should have attempted nothing among the Bulgarians. He is rebuked for the hasty ordinations of laymen into the diaconate.

[*Latin ed. p. 281*]

DOCUMENTS 281, VOLUME CXXVI, LETTER OF POPE JOHN VIII, YEAR 878, To Michael, King of the Bulgarians (p. 757) He laments that the Greeks follow [their own path], urges a return to the bosom of the Roman Church, then expresses gratitude for the gift received, and finally indicates that a certain Sergius was removed from the priesthood and episcopacy due to deceit. > "Therefore, return to Blessed Peter, the first among the Apostles, whom you have loved, whom you have chosen, whom you have sought, and whose patronage you have experienced in your needs, and from whose teachings you have received wholesome and fitting instruction, to whose protection you have commended yourselves and entrusted yourselves entirely..." etc. April 16, Year 878, To Peter, Count (p. 760) Letter sent through Paul and Eugenius, Bishops, on April 16. He urges that Michael, the King, be brought back to the bosom of the Roman Church. p. 762, To a Certain Nobleman of Bulgaria, Year 878. With similar arguments, and almost the same words as in the preceding letter. > "Therefore, may the most Christian King return with eager heart to the See of the Blessed Peter, and just as a deer, having taken something harmful, desires to return to the sources of water, so may his soul desire and yearn for the life-giving streams of his teachings..." Month of April, Year 878, To Ignatius, Patriarch of Constantinople (p. 763) For the third time, he warns against the usurpation of the region of Bulgaria, which has long belonged to the Roman Church, and he removes the bishops consecrated in that region by him or his suffragans within thirty days, and if, after two months, he does not obey, he is deprived of the communion of the Body and Blood of the

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Lord; and if he persists in his obstinacy, he shall also be deprived of his patriarchal dignity. > "To our most reverend brother Ignatius, Patriarch of Constantinople."

[*Latin ed. p. 282*]

282 DOCUMENTS: No one is ignorant of the region of the Bulgarians, which, from the time of Pope Damasus of blessed memory and thereafter, until the incursion of the pagans, was governed by prelates of the Apostolic See... It was governed with moderation... Given in the month of April, by Paul and Eugenius, Bishops, in the year 878. To the Greek Bishops and Clergy: They are declared excommunicated, because, having invaded the regions of the Bulgarians, they performed illicit ordinations there; they are also to be deprived of their dignity, unless they depart within thirty days from all Bulgarian territory. But if anyone should disobey, it is decreed that the episcopate be restored to him which he held in Greece; and if he previously held none, if he is worthy, it is commanded that a vacant see be conferred upon him. To all the Bishops and other Greek clergy who have invaded the diocese of Bulgaria and, through this, are excommunicated. Given by the same, on the sixteenth day of the month of April, in the year 878. To Basil, the Emperor: He laments that the Church of Constantinople still suffers from schism, concerning which he sent legates. In the year 879. To Michael, King of the Bulgarians: He urges that he return to the obedience of the Roman Church, from which he and his people have strayed. "But I implore you, most beloved son, that you and your people return without delay to the bosom of the holy mother Church of Rome, which is the head, established by God, of all the Churches spread throughout the world... " Given on the sixth day before the Kalends of May, in the year 879. To the Advisors of Michael, King of the Bulgarians: To Peter, Cerbulae, and Sundica, and to the other noble advisors, our beloved sons, Michael, King of the Bulgarians: "We again and again urge and exhort you in the word of Christ to hasten to return to us... you sin against God if you neglect to heed our voice." Given on the sixth day before the Kalends of May, in the year 878. To Sencslav, the Count: He commands that he provide a safe route for the legate whom he sends to the King of the Bulgarians, and that he provide the necessary assistance.

[*Latin ed. p. 283*]

DOCUMENTS 283 Because the fame of your devotion... has reached us, we confidently proclaim and command the glory of your name, etc. Given as above, in the year 879, To Branimir. (p. 841) He receives him returning to the bosom of the Church of Rome, exhorts him to persevere in the love of God, grants him the Apostolic blessing which he had requested, and encourages him to allow his legate to deliver a letter to the Bulgarians. Given on the 7th of June, in the year 879, To the priests and people subject to

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Branimir. (p. 842) He receives them returning to the bosom of the Church of Rome, and exhorts them to persevere. Given on the 7th of June, in the year 879, To Michael, King of the Bulgarians. (p. 848) He gives thanks to God that he has sent legates to him, willing to receive the teachings of the Church and the canonical institutions, he urges him to return to the Church of Rome, and if it pleases him, he promises to send a legate. Given on the 6th of June, in the year 879, To Michael, King of the Bulgarians. (p. 848) He expresses gratitude for the legation and the services rendered, laments that he has departed from the Church of Rome, to which he urges him to return, and points out that the Greek diocese of the Bulgarians, being under the authority of the Roman Pontiff, is contrary to the canons. Given on the 18th of July, in the year 879, To Methodius, Bishop of Pannonia. (p. 850) He commands him to come to him so that he may learn of his teachings, and prohibits the celebration of the Divine Office in the Slavic language. Given as above, in the year 879, To Basil, Constantine, and Alexander, Emperors. (p. 853) Moved by the prayers of the Emperors for peace in the Church of Constantinople, he makes concessions to Photius, so that he may succeed Ignatius as Patriarch of the Church of Constantinople, and decrees that henceforth no one shall attain to the patriarchal dignity except through the ecclesiastical grades, and he commands the Patriarch of Constantinople to place the Bulgarian diocese under the jurisdiction of the Church of Rome.

[*Latin ed. p. 284*]

284. He leaves behind documents, urging all to render due obedience to the patriarchs; he commands that those initiated by Methodius and Ignatius be admitted to communion with the Church, and excommunicates those who are unwilling to communicate with Photius. Given on August 16th. (This letter by Photius was altered by suppressing whatever was detrimental to himself.) Year 879. To Photius, Patriarch of Constantinople! (p. 870) To Photius, Patriarch of Constantinople! He decrees that, provided he requests forgiveness at the synod, no one henceforth shall be ordained as a bishop within the same Church from among the laity; he orders that the Bulgarian diocese be restored to the Roman Church. (p. 872.) Note: Knowing the authority inherent in Apostolic letters, Photius, when reading them at the synod (in the Greek language), added and omitted at will, according to his own judgment, whatever he deemed necessary. Regarding the Bulgarian diocese, Photius completely omitted [certain passages]. (p. 874) Note: He shortened what John had written concerning the restoration of the Bulgarian diocese. Year 880. To Count Sfentopulchrum (p. 904) He congratulates him on his and his subjects' observance of the Apostolic See; he receives them into his faith; he declares that Methodius, the Archbishop, has professed the orthodox faith, and confirms his rights and privileges, sending him to govern them. He announces the consecration of the bishop of the Nitrian Church and desires another to be sent to him, whom he will

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appoint to lead the Church; he commands that all obey this Archbishop; he grants that Divine services may be recited in the Slavic language, provided that the Gospel is first recited in Latin. Given in the month of June. To Methodius, Archbishop of the Moravian Church, who came to our presence, and to Basil, Bishop of Zagora, to the Pope (p. 1115). "We, having learned these things from the emperor [Caloioanne], who caused us to be summoned, raised our hands to heaven with the entire people, saying thus: The Lord has remembered our people, for we have not acted as good sons; we beseech you, act as a good..."

[*Latin ed. p. 285*]

DOCUMENTS 285 > "To the father, so that our Lord the Emperor may obtain what He requests from you, because he is worthy to receive it, since he and his entire Empire have a sincere devotion to the Church of Rome, as if they are heirs descended from the blood of the Romans..."

"The Prince's petition to the Pontiff, through the Archbishop of Zagora, seeks communion with the Church of Rome. To the noble Prince Bellota, his wife, and his sons (p. 118): "We rejoice that you show a sincere devotion towards us and the Church of Rome." Given at the Lateran, the 5th of December. Migne, Patrology, Vol. CXXV, Innocent III, Pope of Rome, Letters (p. 278).

"POPE A. VII, YEAR 1204 OF CHRIST. To John, King of the Bulgarians and Blacks, and his descendants, a privilege by which to the Reverend Father Leo, presbyter and Cardinal Legate of the Apostolic See, is granted the faculty of anointing and crowning him as King. Given at Anagni, the 6th of March. To the Archbishop of Trinovitania (p. 280). He also establishes the Archbishop of Trinovitania as the Primate of all Bulgaria and Blacharia, and sends him a privilege of this kind through the aforementioned legate. Given as above. To the Primate of the Bulgarians and Blacks, Archbishop of Trinovitania (p. 282). He informs him that he has ordained a Bishop of Brandisuber, and orders that in the future, both the Primate and the Metropolitan Bishops and priests of that province receive the anointing. Given as above."

[*Latin ed. p. 286*]

286 DOCUMENTS: The instrument by which the King of Bulgaria and Blacheria subjected his kingdom to the Roman Church (p. 287). Letters from Casilius, Bishop of Trinovitania (p. 288). Concerning the fact that Caloioannis was invested with the pallium by Pope Innocent (p. 290). On the same subject as in the preceding letter, to Anastasius, Archbishop of Belebusdensis (Bulgaria) (p. 292). He sends him the pallium (the Pope). In the year 1204, to the Illustrious King of the Bulgarians and Blacheria (p. 293). He informs him that he has ordered his legate to anoint him and grant him royal privileges. In the year 880, to Barnimer, Count, and others

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(p. 918). He expresses his gratitude for their obedience to the Apostolic See, and encourages them to persevere. He orders legates to be sent to them, promising that upon their return, he will send his own legate, to whom they should pledge their fidelity according to the rites of the Church. Given in the month of November, in the year 880. To Michael, King of the Bulgarians (p. 919). He is surprised that he has not sent legates, as he had promised for a long time, and urges him to do so as soon as possible. Given also in the year 882, to Michael, King of the Bulgarians (p. 938). He urges him to return to the faith and obedience of the Roman Church, and to send legates. In the month of October: "Remember your promises." To Michael, King of the Bulgarians (p. 959). JOHN VIII TO MICHAEL, KING OF THE BULGARIANS: "If it is evident from those whom we had excommunicated, that the sacraments which you receive are not those of a Catholic, but rather those of schismatics, you seem to have abandoned the faith, not as Catholics, but as schismatics." Migne, Patrologia, Vol. CCXIV, Innocent III. TO THE NOBLE JOHN, IN THE YEAR 1199: To receive the Apostolic legate with reverence (p. 825). "We have heard that you were born in the noble city of Rome..."

[*Latin ed. p. 287*]

DOCUMENTS 287: "Your ancestors have derived their origin from there, and you, through the lineage of blood, have contracted a bond with them, and a sincere affection for the Apostolic See, etc. In the year 1202, a letter from John, Emperor of the Bulgarians (p. 1112) TO THE POPE IN THE YEAR 1202: Letters from John, Lord of the Bulgarians and Blaci, sent to Pope Innocent III, translated from Bulgarian into Greek, and then from Greek into Latin. "This is what our empire requests from the Apostolic See, that we may be firmly united with the Roman Church, as a filial relationship. "First of all, we request from our mother, the Roman Church, the crown and honor, as a beloved son, according to what our former emperors have had. John, Lord of the Bulgarians and Blaci (p. 1113) THE POPE RESPONDS TO THE ABOVE LETTER (V Kal. Decembris): "We command that he (our legate) diligently inquire into the truth, through ancient books and other documents, concerning the crown conferred upon your ancestors by the Roman Church, and that he treat with you on all matters. It is expedient for both your temporal glory and your eternal salvation, that just as you are Roman by lineage, so too may you be Roman by imitation, and that the people of your land, who claim descent from the Romans, may follow the institutions of the Roman Church, so that even in divine worship, their customs may seem to recall their ancestral traditions. "Given on the 5th of December, to the Archbishop of Trinovita, of all Bulgaria and Biacia (p. 294) To the Primate and other Archbishops, Bishops, Clergy, and People of Bulgaria and Biacia: He sends them the pallium. The form for delivering the pallium. The form of the oath to be taken by the Archbishop of Trinovita.

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To John, illustrious King of the Bulgarians and Blaci (p. 295): He sends him a banner. "We have deemed it fitting to send you a banner."

[*Latin ed. p. 288*]

288 DOCUMENTS: "Not without mystery, the Cross and the keys: for Blessed Peter, the Apostle, bore the Cross for Christ, and received the keys from Christ." "Use the same standard, and amidst the battles, remember the Lord's Passion, and recognize His teaching, to whom the Lord Himself said: 'You are Peter, etc.';" "Thus, your enemies will not only be unable to prevail against you, but before your face, if the Lord wills, they will not stand."

To the Archbishops, Bishops, etc., of Hungary (p. 296): He writes to them concerning the reduction of the Bulgarians, and that they should treat the legate well.

To the Archbishops, Bishops, etc., of Serbia (p. 297): On the same subject.

To the King of Hungary (p. 410): He is deeply grieved that the Cardinal Legate's passage to Bulgaria, etc., was unjustly impeded within the borders of Hungary.

Letters from John, King of Bulgaria, to the Pope (p. 551): He informs him of the Legate's arrival, from which point onward he received the crown, and sends some gifts to him (in the year 1204).

Letters from Basil, Primate of the Bulgarians, to the Pope (p. 553): He informs him that he was strengthened by the sacred unction from the Cardinal Legate.

The reader will find further information in the most recent and learned writings that have been published.

[*Latin ed. p. 289*]

289 Letters from His Holiness Pope Leo XIII, by which the spiritual jurisdiction and the title of Bishop of Tournay are absolutely taken away from Bishop Edmund Dumont.

LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR PERPETUAL REMEMBRANCE.

Less than a year has passed since, moved by many and most serious reasons, by a Decree issued by the Sacred Congregation for Bishops and Regular Canons, on the twenty-second day of the month of November of the preceding year, one thousand eight hundred and seventy-nine, we were compelled, for the good of souls, and for the order and tranquility of that Church, to deprive the Reverend Father Lord Edmund Dumont, Bishop of that Diocese, of the exercise of all jurisdiction, both spiritual and temporal, in the Diocese of Tournay, and at the same time, we granted full jurisdiction in that same Diocese to an Apostolic Administrator, at the will of the Holy

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See.

Now, however, which causes us great sorrow, we are compelled to proceed further, to obey the supreme authority, in order to provide a powerful and effective remedy for the evils and scandals which, caused by the aforementioned Bishop, are most grievously disturbing the Diocese of Tournay. For, from undeniable reports which have reached Us from all sides, from the faithful and from the diocesan clergy, especially from the Cathedral Church, and also from all the Bishops of the Belgian region, and also from the very notoriety of the facts, we have clearly ascertained how badly the aforementioned Bishop is behaving, who for several months has become a man of disturbed mind and disordered conduct, and who does not cease to clamor and bitterly reproach, both in word and in writing, against the aforementioned Decree, and who, moreover, acting as a stumbling block, with the consent of the most impious writers of the Catholic Church, does not cease to inflict reproaches and injuries even through public newspapers, almost daily, incites the faithful to the same wickedness, and contemptuously opposes, with defiant words, and with legitimate canonical sanctions, even through appeals to secular tribunals, those men who are conspicuous in ecclesiastical dignity, and even to Us.

Therefore, seriously considering how grave this matter is...

[*Latin ed. p. 290*]

290 Necessity compels us to decree that an end be put to the grave disturbances within this ecclesiastical jurisdiction, and that, with all diligence, we may provide for the salvation of souls in that Diocese, we have decided that the entire series of events must be subjected to examination by a special Congregation composed of several Cardinals of the Holy Roman Church, chosen by Us from the ranks of the Sacred Council of Bishops and the Congregation of Regulars. This special Congregation, after having considered all that has been stated above, and after having carefully and diligently examined all the acts and documents, determined that the aforementioned Prelate, holding the title of Bishop of Tournay, has abused his office, causing scandal and ruin to the faithful, and considered whether the case warranted it, so that, with a decree issued on the twenty-second day of November in the year one thousand eight hundred and seventy-nine, any jurisdiction, whether spiritual or temporal, within the Diocese of Tournay should be absolutely and permanently revoked from Prelate Edmund Dumont, even through the deprivation of that title from the Church. Therefore, in a meeting held on the twelfth day of the current month of October, the aforementioned Prelate, whether through the constant and increasingly grave disturbance of his mind, or through the scandals that have resulted from it and the great danger to souls, was judged by all the Bishops of the Kingdom of Belgium to be entirely unfit to sustain the episcopal governance of the Church of Tournay, and was considered to have

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been previously subject to canonical irregularities, and therefore, it rendered a judgment in favor of the proposed question. We, therefore, having maturely considered this very grave matter again, according to the counsel and vote of the aforementioned special Congregation, and by the fullness of Our Apostolic Authority, by Our own motion, albeit with a heavy heart, sign these Letters with Our hand, and hereby absolutely and permanently prohibit and revoke all jurisdiction, whether spiritual or temporal, within the Diocese of Tournay from Prelate Edmund Dumont, and We declare that the title of Bishop of the Church of Tournay is hereby taken away from him and declared to be taken away. We also decree that the aforementioned Prelate is hereby released and absolved from any special bond that he had with the Church of Tournay, which arose from the Apostolic Letters granted to him on the tenth day before the Kalends of November in the year one thousand eight hundred and seventy-two. Finally, We command that these Our Letters be notified to Prelate Edmund Dumont, to the Cathedral Chapter, and also to the Apostolic Administrator, the Bishop of Eumenia in the parts of the Infidels, whom We confirm in the office entrusted to him for the administration of the Apostolic Church of Tournay to Our satisfaction. These Our Letters and everything contained therein, even with regard to anyone who has or may have a right or interest in the foregoing or in any part thereof, are valid and effective.

[*Latin ed. p. 291*]

291. Those who possess, or claim to possess, any status, order, and preeminence, and ecclesiastical or worldly dignity, even if specifically and individually mentioned and expressed, to whom we have not consented, or where some of them have not been adequately called, or even heard at all, or for any other reason, including legal and privileged causes, under any pretext or guise, even under the seal of law, at no time due to a flaw of deception or fraud, or a defect of intention, or the consent of Ourselves or those who have an interest, or any other defect, however great, unforeseen, substantial, or most substantial, or even because the formalities and whatever else that should have been observed and fulfilled in the aforementioned matters have not been observed and fulfilled, or because the causes for which these present documents have been issued have not been sufficiently presented, verified, and justified, or for any other causes or pretexts, may be noted, challenged, or otherwise infringed, suspended, restricted, limited, or brought into dispute, or that a remedy of restitution, redress, or other legal or factual or just remedy may be sought against them; and that all of these, under any contrary constitutions, calls, suspensions, limitations, derogations, modifications, decrees, or declarations, general or special, even with full knowledge, power, and authority, and for whatever reasons, are not included, but are always to be excepted, and that, as an office and act of the Holy See's Providence, with full knowledge, and with

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the fullness of Apostolic authority, all such acts and pronouncements are and shall be perpetually valid and effective, and shall have and obtain their full and complete effects, and shall be perpetually and inviolably observed by all to whom they apply and will apply in the future; and if, by anyone, with or without knowledge, anything should happen to contravene these, it shall be null and void, and We will and do decree it with equal authority. Notwithstanding any legal objections that may be raised, and other Our regulations and those of the Apostolic Chancery, and the privileges of the aforementioned Church of Tournay, and all Apostolic constitutions, whether in synodal, provincial, or universal councils, or in special or general edicts and ordinances. All of these, even if a special, specific, and individual mention, or any other refined form, were to be included for the purpose of preserving them, shall be considered as if, word for word, nothing at all were omitted, and the form contained therein observed, and shall have, with full effect, for all of the aforementioned, and especially and expressly, with full knowledge and authority.

[*Latin ed. p. 292*]

292 By equal severity of letters, we abolish and wish to have abolished all other contrary things whatsoever. We also wish that to these present documents, even when copied, and signed by the hand of a public notary, and sealed with the seal of some person constituted in ecclesiastical dignity, the very same faith be applied everywhere as would be applied to these present documents if they were exhibited or shown. Therefore, it is not permitted to any person whatsoever to infringe this page of Our interdiction, revocation, deprivation, redemption, solution, relaxation, mandate, decree, confirmation, and will, or to dare to contradict it with reckless audacity. But if anyone should presume to attempt this, let him know that he will incur the indignation of Almighty God and of the Blessed Apostles Peter and Paul. Given at Rome, at Saint Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and eighty-eight, on the third day before the Kalends of October, in the third year of Our pontificate. f I, LEO, BISHOP OF THE CATHOLIC CHURCH. C. CARD. SACCONI, Pro-Datary. FOR THE LORD CARDINAL T. MERTEL, Angelus Trinchieri, substitute. Seen by the Most Reverend Curia J. De Aquila and the Vice-Comites. Loc. f. (lead).

[*Latin ed. p. 293*]

293 FROM THE HOLY CONGREGATION FOR THE DISMEMBERMENT OF DIOCESES, September 20, 1879. SUMMARY OF THE CASE. The parish church of the place of Scarmagno encompasses two villages within its territory, forming the community of Scarmagni, which are almost equally distant from each other and from the parish church. One of these villages, called Bessolo, has a population of 223, and the other,

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called Masero, has a population of 140. In the first of these villages, there is a sufficiently large church dedicated to Saint John, which is well-equipped with sacred furnishings, and in which there is an endowment, established by the noble family Perrone Saladino, who hold the right of patronage. During the year 1878, several inhabitants of Bessolo and Masero approached the Bishop, earnestly requesting that a new parish be established in the church of Saint John the Baptist, due to the distance of both places from the parish church of Saint Michael in the place of Scarmagno, and also because of the difficult roads, especially during the winter. In order that a suitable priest might be appointed, the noble Count Perrone Saladino readily gave his consent, so that the endowment existing in the aforementioned church, which he held by right of patronage, might be transferred to the parish. Furthermore, the approval of the government was not lacking, which, while inquiring about a suitable priest,

[*Latin ed. p. 294*]

294. Regarding the annual sum of 800 *libellae*, it is necessary that the assets of the aforementioned benefice be converted into what are commonly called "Cartelle di Consolidato." A pious woman, in order to demonstrate, was prepared to establish a sum of 800 *libellae* as the endowment of the benefice, and would readily purchase the assets of the benefice, except for the urban and rural house together with the attached garden, which would remain with the Parish Priest, and in exchange, she would provide a guarantee for the annual yield of 800 *libellae*, entirely exempt from the tax they call "di ricchezza mobile." This proposal was not only approved by the patron, but also by the government, and by the current administrator of the benefice, whom the Bishop highly commends for his zeal for the salvation of souls and his merits in teaching. Indeed, this woman, in order that the salvation of souls might be promoted as soon as possible through the erection of a new parish, verbally promised to pay all expenses, both for the erection and for the transfer of assets, and to increase the annual endowment to one thousand one hundred *libellae*, provided that the value of the "tesserarum consolidatus" did not increase. The Bishop, when consulted according to custom, demonstrated the utility and necessity of this dismemberment, and prayed that the right of patronage for the erection of the new parish remain as it is now.

Dispute.

THOSE THINGS WHICH ARE OPPOSED TO DISMEMBERMENT.

It is no secret that the canons most strongly disapprove of the dismemberment of parochial benefices, because it appears to be a form of alienation, and is therefore considered abhorrent in law. (Ab. in cap. S Ad Audient, de Eccles. aedi f.* Reiffenst. lib. 3 Decret, tit. 48 %. 2, Amostaz De caus.

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piis lib. 5 cap. 3). Therefore, this remedy of dismemberment should not be resorted to unless there is a canonical reason, which must be established in the records through legitimate proofs, so that the mere assertion of the Bishop is not sufficient. (Card. De Luca De benef. disc. 45 num. 6j et disc. 25 de Parodi, num. 6, Rota coram Othobon. decis. 6). The canonical reasons, for deciding on the dismemberment of parishes, consist in necessity or evident benefit to the Church, as is taught by the Tridentine disposition in session 21, chapter 4, De reform, and by Rebuff.

[*Latin ed. p. 295*]

DISMEMBRATIONIS 295, in its practice, in the title concerning the revocation of unions, number 6; Reclusius, *De re parochiali*, part 4, title 12, number 63; Rota, part 4, decisions 68, number 15, and part 10, decisions 224, number 4, recently. But in this matter, none of these seem to apply. Indeed, there is neither necessity nor a great distance, nor roughness of the roads. For the place of Bessolo, just as much as that of Masero, is scarcely a single stone's throw from the parochial church. And Fagnanus, in chapter "Ad audientiam," number 23, teaches that such a distance is not sufficient to induce the necessity of a new parish, and the Sacred Congregation has repeatedly affirmed this, as can be seen in Lancianensis, November 18, 1747, and in Novarense, Dismembratio, August 12, 1747, confirmed on November 18 of the same year. In the latter, the petitions for the dismemberment of the parish were rejected, although it was a matter of a distance of three miles, together with no security of the roads. Nor can anything different be said about the roughness of the roads: since the road that leads to the parochial church remains open in all respects, for easy access to it. For it is not difficult, nor arduous, nor is there a torrent or river intervening, so that it neither hinders the parishioners from visiting the church, especially in winter, without a manifest danger to their lives, nor does it hinder the priest from going there to administer the sacraments in case of illness, which would provide another reason for carrying out the dismemberment, as stated in the Tridentine Council, session 21, chapter 4, concerning reforms; Rota, decisions 476, number 3, part 10, decisions 224, numbers 6 and 8, part 17, recently; Sacred Congregation, January 6, 1694, book 44, Decrees, page 5; Puteolana, Erection of the Parish, January 18, 1701, book 51, Decrees, page 340; Novarense, Divisiones, or Dismembrations, September 20, 1760. The aforementioned priest confirms this. Therefore, the only reason for dismemberment would be reduced to the sole benefit, which must be precisely evident and absolute, according to chapter 1, *De Rebus Ecclesiasticis non alienandis*, and Lotterius, *De Re beneficorum*, book 1, chapter 28, number 30. But, except for the closer presence of the parish priest in this case, no other benefit can be offered to the inhabitants. Now, at this time,

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there is nothing for them in spiritual matters.

[*Latin ed. p. 296*]

296. The *dismembratio* [separation of a parish] is lacking, and nowhere do they complain that someone has died without the sacraments. In the place called Bessolo, there is a church with a benefice, where Mass is celebrated on feast days, and the confessions of the faithful are heard. In the other place, Masero, a beneficed priest also resides, who, by the foundation, is obligated to celebrate Mass in the chapel dedicated to Saint Eusebius on feast days, and to instruct the children in the catechism. Furthermore, these beneficed priests could, in cases of urgent necessity, perform the duties of a parish priest, so that it would not be necessary to resort to the odious remedy of *dismembratio*. Therefore, since the reason for utility does not seem to be evident, precise, or absolute, the prayers of the clergy should not be entirely rejected, since they seem to promote an ambitious piety, leading them to abandon the Church. However, granted, or rather, conceded, that it is necessary to resort to *dismembratio*, it does not seem permissible that the place of Masero, separated from the mother Church, should be united to a newly erected parish. Both law and the dictates of reason suggest this. Indeed, considering that *dismembratio* is a most odious thing, the law requires that the prejudice to the Church caused by *dismembratio* be minimized as much as possible. Furthermore, reason dictates that the inhabitants of Masero should not seek assistance from Bessolo for religious matters, and then contend with Scarmagno for the implementation of civil affairs. Therefore, the inhabitants of these places complain about this matter, and have presented their prayers to both the Ordinary and the civil government, so that they may not be separated from the parish of Scarmagno.

THINGS THAT FAVOR *DISMEMBRATIO*. But it must be considered that, with regard to the distance that must be maintained in the conciliar [diocesan] sphere for a *dismembratio* to be carried out, there is still no defined limit; therefore, Fagnan teaches that it should be left to the judgment of the judge, *loc. cit.*, n. 48, *in fine*. Rebuffat, however, more appropriately entrusts this matter to the prudence of the Bishop, *in praxi benef.*, part. c. 1, *de erect.*, *in Cur.*, et *Paroch.*, because the nature of the places and the needs and utility of the flock entrusted to him are, of course, known to him better than to anyone else. It would be a grave error for someone to proceed solely on the basis of certain declarations of the Congregation, or decisions of the Rota, or the opinions of certain doctors, in order to establish or deny the erection of a new parish.

[*Latin ed. p. 297*]

DISMEMBRATIONIS 297, as excellently noted by De Luca in his Annotations to the Council of Trent, dissenting opinion, section 16, and by Lau-

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rentius in *Formularium de Beneficiis*, volume 1, question 154, number 4. For, when the question pertains to a matter of fact, and is to be decided based on the individual circumstances and particular qualities of each case, it must be determined accordingly. It is well known that the Holy Mother Church, in order to best safeguard the salvation of souls, and that the Parish Priest is given to the people, not the people to the Parish Priest, has adapted her disciplinary regulations to various times, as St. Thomas states in *De Novo et Vetere Disciplina*, part 1, book 1, chapter 18, number 17; book 3, chapter 56, number 19; and part 2, book 1, chapter 45, numbers 18 and 14. Hence, for the greater benefit of the people, divisions [of parishes] have been permitted, as is read in the *Dismembrationes Paroeciae* of Laquedonien, 16 December 1776, §. In addition to these legal precedents, it must be considered that the aforementioned villages are located one and a half miles from their own Parish, and the road leading to it runs along the roots of a hill, so that, with the melting of snow or heavy rain, it becomes completely difficult to traverse. Given the distance and the roughness of the roads, especially during the winter, it is clear that a just and necessary reason for the division exists. For, in order for anyone to reach their Pastor, they would have to travel three miles round trip, walking through icy snow, or under the scorching heat of the sun, which would be a great burden for a strong man, and even more difficult and dangerous for children, the weak, women, and the elderly, who would never hear the voice of their Pastor. Therefore, the aforementioned Archbishop himself stated that the utility and necessity of the requested division into a Parish were evident. Furthermore, it should not be overlooked that the newly established Parish would retain some of the existing structures of the benefice of St. John, namely a house with a garden, which, over time, would also be lost if left unattended. Indeed, all the other assets of the benefice would be preserved. For, once the new Parish is recognized by the government, a suitable and sufficient house and land would remain for the Parish Priest, which would be provided by the generosity of the aforementioned woman in annual installments of 800 and 1000, if the value of the Consolidate bonds does not increase. However, for this annual income, she would receive almost everything.

[*Latin ed. p. 298*]

298. He would acquire the benefits of the dismemberment, but while, on the one hand, the sale cannot be avoided, it is a matter to be inquired into by the governing authority; on the other hand, it is useful to the Church, provided that neither the patron, nor the beneficiary, nor the Bishop obstructs it; indeed, both he and his predecessor demonstrate that the sale is most useful, and Petra, in the Commentary on the Constitutions, section 4, number 110, 111, 121, and 147 of Leo the Great, teaches that goods belonging to the Church can be alienated for its benefit, even in the case of dismem-

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berment. It seems less important that the parish priest states that the place of Masero should not be added to the new parish; for the inhabitants of that place are eager to be added to the new parish, and the inhabitants of Bessolo have strongly insisted on this. Indeed, for the inhabitants of Masero, the place of Bessolo is more convenient, both for civil and religious matters; which is confirmed by daily events. Having explained these matters, it was left to the judgment of the Most Reverend Fathers to decide what response should be given to Unbium and how the place of the new parish should be determined in the case of dismemberment of the old parish and erection of a new one.

RESOLUTION. The Sacred Congregation of the Council decided on September 20, 1879, to respond: "Affirmatively in all respects, provided that the parish priest of the place of Scar~ is given each year a certain quantity of wax, to be determined by the Bishop, as a sign of belonging."

FROM WHICH IT MAY BE GATHERED THAT: The roughness of the roads and the distance from the parish can cause the dismemberment to be granted, even if the parish priest is reluctant, provided that nothing is lacking to the new church.

[*Latin ed. p. 299*]

29, 9, 11. The supreme law, even in this matter, is the salvation of souls; therefore, the Holy Church retains the right to assign a pastor to the people, and not the people to the pastor.

111. It is left to the discretion and prudence of the Bishops to determine what distance should be allowed for the division of a parish, since this has not been defined by law.

IV. Since such questions are matters of fact, it is proper to refer them to the prudence of the Ordinaries, who are better able to know the conditions of the places, the needs, and the advantages of the flock entrusted to them.

V. If there are canonical reasons that cause great inconvenience in accessing the Church to receive the sacraments, the division of a parish may be granted, even if it could benefit the souls, according to the decree of the Council of Trent, Session 24, chapter 4, on reforms, if it seems that the greater good of the people requires it.

VI. In the matter of the greater good of the people, it has been determined that the erection of a new parish, to which the inhabitants of that place can more easily have access, is beneficial, as has been demonstrated by numerous testimonies.

(1) (1) Many things relating to the division of parishes are mentioned in the following appendix.

APPENDIX VI. On the power of the Ordinaries, and on the jurisprudence regarding the division of parishes.

(1) Since it often happens that questions arise which must be reported, it

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is necessary to refer to these periodicals, which are published by the Sacred Congregation.

(1) See another appendix on the consent of the pastor and the people in the division of parishes, Volume III, page 396.

[*Latin ed. p. 300*]

300 APPENDIX VI. Concerning the canonical authority of the founder with regard to the division of parishes: I have not deemed it ungrateful to address the readers, if in this matter we have expressed anything of value, especially concerning the most illustrious teachings of Fagnani. In order to allow for a more extensive discussion, we have placed these notes at the end, concerning both the authority of the Bishops in the matter, and the legal considerations, which, over time, have been presented to various offices in the sacred Roman dicasteries. Modifications have been made. Therefore, *from the thesis proposed by the Most Holy Fathers*, the Bishops are endowed with the authority to divide parishes, and to institute, with ordinary authority, a priest, even if he is reluctant, to perform this duty, as is delegated by the Apostolic See. What is further granted to the Bishops is the Apostolic authority, according to the opinion of the Canonists, as can be gathered from Chapter 3, from the Council of Trent, Session 21, title 48, concerning the building of churches, book 3, chapter 4: "Bishops, even as delegates of the Apostolic See, in all those churches, both parochial and chapels, where the people are so numerous that one priest cannot suffice to administer the sacred rites and to perform the divine worship, must compel the rectors, or others to whom it pertains, to add to their number as many priests as are necessary to administer the sacraments and to celebrate the divine worship. In those places, however, where, due to distance or difficulty, the parishioners cannot, without great inconvenience, access the sacraments and divine services, new parishes must be established, even if..."

[*Latin ed. p. 301*]

IX, VI. Concerning Rectors, according to the form of the Constitution of Alexander III, which begins, "Ad audientiam," they may be appointed. To those priests who are to be assigned to newly erected churches, a suitable portion shall be assigned by the Bishop's authority, from the fruits belonging to the mother church whenever necessary; and, if necessary, he may compel the people to provide what is sufficient to support the life of said priests. (1) Therefore, from the law, or from the texts cited, it is clearly understood that Ordinary authorities possess a double authority, namely, ordinary and delegated. The delegated authority, for the most part, is granted to Bishops by the Apostolic See, so that they may proceed with firmer right against those who are exempt, and are immediately subject to the same Apostolic See (2). For exemptions are not violated when Bishops

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act as Apostolic delegates. Both authorities, together or separately, are used by Bishops (301) when they must divide the parishes subject to them. Regarding exempt parishes, they must use delegated authority; because they possess power over them only through this authority; and in this case, they perform the function of the Apostolic See, acting as its delegates and being able to act only in this way (3). However, the following question arises: Do Bishops, who otherwise do not fully enjoy authority, as the Roman Pontiff, become bound by any conditions or formalities when they divide churches? The Cardinal De Luca, in *De Parochis*, book 3, chapter 35, paragraph 6, answers this question: "It is a received conclusion that the division of one church from another is considered a true alienation; therefore, a concurring solemnity and a just cause are required, according to the teaching of the Abbot." To this must be added what is appropriately written on page C of the Council documents in Massanen and Popul, on May 9, 1840, §. "Nescit." "No one is ignorant who has even greeted the sacred canons at the threshold, that the division of benefices is a matter of law (1). Two things should be noted in this text. 1. That, according to the consensus of Doctors, the ordinary power of dividing parishes is presuppente and confirmed by the Council of Trent, when it grants Bishops delegated power. The text also indicates that they are already endowed with ordinary power. 2. That, by virtue of this decree, there remains no controversy regarding the consent that must be given by the parish priest. Before Trent, it was doubted whether the parish priest of a parish being divided should give his consent; this doubt is removed by the words "even without the consent of the rectors." (2) A parish can be removed from the jurisdiction of the Ordinary if it is attached to a monastery or chapter that is exempt, or for another reason. (3) In the decree of division, it must be noted by what authority the Bishop proceeded, so that the decree does not become void; especially if it concerns exempt churches.

[*Latin ed. p. 302*]

302 APPENDIX VI. "most odious; for it enriches one nation, as the Abbot says in chapter Âd audientiam in §. notabilia, Lotter. De re ben. 1. 31. question 28. n. 4. Rota Rec. p. 7. decision 6ASS. n. 1. Hence, they teach, that it must only be permitted in cases of urgent necessity, or evident benefit to the Church, and that without exception, according to chapter 12. question 2. chapter and this law 10. question 2. Decius Cons.-441. n. 1. v. 2, Rota decision 578 n. 17. p. 19. §.2. Rec. especially when the matter concerns parishes; for nothing alters the status of churches, especially parochial churches, more than divisions or dismemberments, as Lotter says in de re ben. 1. 1. question 28. n. 1. If such circumstances exist in a case of dismemberment, there can be no reason that can oppose it; so the Sacred Congregation in fmolen. dismem. 8 Jan. 1726, in Aquén. 13 July of the same year, in Asculana Dism. 15 Decem. 1719; and therefore, not even

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the disagreement of the patrons, as it is clear from the Council of Trent, Session 21. chapter 4 de ref. It is consistent with what Cardinal De Luca says in De Regular, discourse 5. n. 4: "Divisions and dismemberments," he says, "require all, and perhaps greater, solemnities, whether due to necessity or utility; in the same way as in formal alienations are required..." (1). Therefore, it follows that, in order to carry out a division properly and validly, there must be a just cause and certain formalities. But since the pious Mother Church seeks nothing but the salvation of souls in all things, therefore, for a division, there can be no other just cause than distance or some other difficulty for the faithful in accessing the Church to receive the sacraments and hear the divine offices. The most learned Fagnanus states in cit. cap. n. 23: "From the foregoing, it follows that there is only one reason for establishing a new parish, namely, great difficulty in accessing the mother Church to receive the sacraments and hear the divine offices; other causes, namely distance of place, intervening rivers, closed city gates, the necessity of lepers, and other similar impediments, justify the establishment only to the extent that they create such a difficulty; otherwise, as has already been said." However, that distance or difficulty in accessing the mother Church must not be any distance or difficulty, but rather one that causes great inconvenience to the parishioners. (1) Fagnanus in cit. Cap. octo enumerates the formalities required, in addition to the just cause for dismemberment.

[*Latin ed. p. 303*]

vi. 303 » It is a just reason for the erection [of a new parish], » if between the people of some » village, and the parochial church or » stream, there are obstacles which » neither have a bridge, nor can be » crossed by a ford... And whenever » a great difficulty arises in re»ceiving the sacraments, it is said » to be sufficient cause for erecting [a » new parish], as has been stated. Therefore, the Council of Trent » speaks of this in alternative terms, as is evident from the ninth session. And this is derived from the very words of the law; for the cited text of the Decrees states: "without great difficulty in reaching it," and Trent: "the parishioners without great inconvenience in receiving the sacraments." Hence, Leurenius, in *Formularium de Beneficiis*, p. 1, q. 154, says: "The cited canon concerning 'distance' does not refer to any distance whatsoever, but to one which is accompanied by great » inconvenience; likewise, the 'necessity' does not refer to any necessity whatsoever, but to an evident one, which is such that no other remedy can be applied, as a sufficient reason for such a division and the new parochial constitution." However, it is not the case that both reasons, namely distance and difficulty, must always be present in order to properly divide a parish. Only one of the two may be sufficient, provided that from that one a great inconvenience arises (1) in accessing the Church to receive the sacraments. Thus, if a part of the people, although not far from the Church, cannot

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access it except with great inconvenience, this would present a just reason for division. Fagnanus, in the cited chapter, n. 19, explains the matter appropriately: "Secondly, it is inferred from the distance of the place or the difficulty." Furthermore, although both cited texts, namely the Decrees and Trent, speak of "great inconvenience" for the validity of the division, no declaration is made as to what constitutes "great difficulty" and "great inconvenience"; therefore, the Canonists argue: "Since the sacred canons have granted to the Bishops the power to divide in the case of great inconvenience, and have not declared in what consists this great inconvenience, it is necessary to leave it to the judgment and prudence of the Bishops to decide in each case whether this great inconvenience is present or not." This is the opinion of Fagnanus, in the cited chapter, n. 18. "How great, then, must this (1) be? Although any inconvenience is not sufficient, it is not required that the parishioners should ever die without the sacraments. Therefore, (says Fagnanus, in the cited chapter, n. 16), "it is sufficient for the validity of the erection that there is a danger that they will die in this way; and such an event is not to be expected, because it is better to prevent it from happening, than to lament it afterward."

[*Latin ed. p. 304*]

304 APPENDIX VI. "Regarding the distance, (1) or the number of parishioners, (2) it is required for the erection of a new parish that the area be sufficiently populated so that the parishioners can readily access the church, since, unless this is the case, it cannot be erected without great inconvenience; and although it can be done even without the consent of the pastor of the church, the matter is left to the judgment of the judge. We have already stated, besides the legitimate cause, that several formalities are required, as enumerated by Fagnano in the cited work, chapter 28 and following. (3) Not only the pastor of the church, but also all others who have an interest in the matter, must be cited. (4) "Principally, for the erection of a new parish, it is required that the extension of the new parish be clearly defined; for, as Leurenius, *Form. Can.* p. 1, q. 160 says: 'I answer, a parish should be divided when the distance between the churches is such that the parishioners experience great inconvenience in attending Mass.'

(1) The Sacred Congregation of Councils has often held in practice the opinion that two thousand paces are sufficient for a proper division; thus, it decided in the case of the erection of a parish in Rimini on June 18, 1789, and in the case of the division of a parish in Piacenza on May 28, 1791. But these decisions cannot be taken as a rule: because it can happen that, with the same distance or difficulty of the route, the division may be approved or rejected because of other circumstances that may intervene. Therefore, the great inconvenience must be considered by the judgment of the Bishop. (2) The more common opinion is that at least ten families are required for the erection of a new church. (3) Cardinal De Luca seems to consider not only

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the citation, but also the consent of the pastor of the church to be a necessary formality for the division; but this is understood in the sense that, unless he consents, he can appeal. If the appellant has been unjustly burdened, such a burden can be remedied by a higher authority. Fagnano, in the cited work, number 12, indicates that in every case it is possible to appeal to the Pope, bypassing the intermediate steps. However, regularly, appeal is made first to the Metropolitan. Appeal is made to the Pope when the division has been made in a exempt parish. Appeal is made to the Metropolitan when the parish is subject to a Bishop, whether the authority has been exercised ordinarily or by delegation. It should also be noted that this appeal has only a devolutive effect, not a suspensive one. Therefore, the Bishop's decree remains in force unless it is annulled by a higher authority, and neither the appeal prevents it from being carried out. (4) When the habitual care of the parish to be divided is distinct from the actual care, the habitual pastor is cited. If, however, the parish to be divided is vacant, then the Bishop appoints someone to inquire into the legitimacy and truth of the cause. If the parish to be divided is under the patronage of a patron, the patron must be cited; but his consent does not seem to be required, especially if he unreasonably opposes the division.

[*Latin ed. p. 305*]

"In any case, speaking strictly, a parish ought to have its own territory, separate and distinct, within which it is not permitted for another parish to undertake anything." Under number 49, he cites Chapter "Ad audientiam," where the learned Fagnanus expounds the question: whether the division of parishes can be carried out by the Bishop, without consulting the Chapter. However, the truer conclusion seems to be, although it was formerly a matter of controversy among canonists, that the consent of the Chapter is not required when the Bishop acts as a Delegate of the Apostolic See in an exempt parish. For in this case, the Chapter cannot object that it was not consulted regarding the division; since the Pope, whose place is held by the delegate, is not bound to seek its consent. However, the Bishop ought to seek the counsel of the Chapter when he proceeds according to ordinary law, and even when he proceeds as a Delegate of the Apostolic See, provided that the parish is one that he could divide according to ordinary law. As we mentioned above, the Bishop can proceed with both authority, namely ordinary and delegated, in the division of a parish that is not exempt. Besides other matters to be observed in the division of parishes, a suitable endowment must be assigned to the new church. Hence, Fagnanus, in the aforementioned passage, number 31, says: "It is required that a suitable endowment be assigned to the church to be built, as in chapter 'Nemo de consecr.' distinct. 1." And already, in Aeta, Volume XIII, page 305, section 6, the Sacred Congregation has stated that, before the erection of new parishes, consideration must be given to

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the endowment. However, it is clear from the very text of Chapter "Ad audientiam" that the erection of a new parish cannot be decreed, unless it is the case that the pastor of the old parish, after the division, can adequately support itself. Furthermore, the right of patronage is reserved to the mother church over the new parish, to the extent that the latter is endowed from the revenues of the former, and a suitable honor must be paid to the mother church. The daughter church must pay an annual census as a sign of subjection. Finally, the erection of the new church must be carried out by the Bishop himself, or by his Vicargeneral, who has a special mandate for that purpose. For those readers who are concerned with the second part of this appendix, let them remember that we are speaking of the jurisprudence of the Holy Congregations regarding the division of parishes. It should not be forgotten, as we have already mentioned, that Cardinal De Luca has stated that questions of division are more a matter of fact than of law. Therefore, there are many examples to be found in the Treasury of Resolutions, in which the Holy See has granted divisions, and many in which it has denied them. Perhaps a different judgment is required, depending on the facts or the great inconvenience of accessing the parish for the reception of the sacraments, and this has often been the case in granting or denying divisions.

[*Latin ed. p. 306*]

306 APPENDIX VI. The division of parishes has occurred in various ways, so that they may devour the flock, unless absolute necessity is present. However, even setting aside the question of absolute necessity, which must be evident, some foresee the multiplication of problems arising from such divisions. Furthermore, the opinion of the Holy See, formerly held in the forum, in its own time, and in matters pertaining to our own, is that the division of parishes is odious, both because it savors of alienation, and because the Council of Trent, Session 21, chapter 4, decreed: "Therefore, let it be decreed that no parish shall be divided." Consequently, the practice in the sacred tribunals has been to avoid dividing parishes. Therefore, if a just cause exists, according to the universal law of the Church, part 2, title 6, chapter 2, section 24, which states: "But yet, if a legitimate cause for erecting a new parish arises, it should not be hindered, even if it is for the benefit of the spiritual needs of the parishioners, who are unable to attend the church due to distance or the difficulty of the road," so responds the Sacred Rota; and the Sacred Congregation concurs. And it makes no difference whether the division of the parish is sought due to a temporary impediment, for example, a river or torrent overflowing in the winter, or even due to a permanent impediment, such as distance; or whether a new parish is to be erected from the goods of the old parish, or from goods obtained from elsewhere, or whether those who have died without the sacraments are to be assisted.

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Therefore, even if the rectors of parishes oppose the division, lest it occur, and often promise to retain one or more chaplains who can assist the spiritual needs of the parishioners, yet, if one considers the vices of our age, the many wolves that prowl, it seems that a greater benefit is derived from the erection of a new parish than from chapels. And this, it seems, is the opinion of the Council of Trent...

Therefore, in these times, the Sacred Congregation has expressed a different opinion; and it has been observed that this is a wise course of action.

[*Latin ed. p. 307*]

On page 307, paragraph 261, and elsewhere in Volume VII, page 37. And you will find other examples of these cases in the other volumes of these periodicals. From these examples and many others cited in the *Thesaurus resolutionum* of the Holy Council, it is evident that ancient canon law has adopted a more moderate approach. For, at that time, the suppression of a parish was considered only as a last resort; thus, it had no place whenever the needs of the faithful could be met by a parochial vicar. In recent times, a milder judgment has been rendered regarding the evident benefit to the Church, so that it should not be confused with absolute necessity. Therefore, in more recent practice, little account is taken of subsidiary or extreme remedies. And insofar as the benefit appears to be for the good of souls, the suppression is decreed, and it is not easily rejected, especially if it has been decided by the Bishop, particularly if there are sufficient funds or endowments for a new pastor. IX VI. In most cases, the suppression is granted. Recall for a moment the example of the suppression mentioned on page 293, and you will find confirmation of the practice of which we have spoken. The pastor of the old parish endeavored by all means to prevent the suppression; but the suppression took place, because it was deemed to be for the greater benefit of the parishioners. Many other examples exist, which indicate that the sacred law now prefers the suppression to other remedies for the good of souls. Thus, in Volume XII, in the aforementioned periodical, on page 287, you will find a case in which the pastor left no stone unturned to prevent the suppression. He argued that there would be no spiritual detriment to the people, since the churches of the Barnabites and Capuchins were located within the parish boundaries and were available for the good of souls. Moreover, the Capuchins and Barnabites provided helpful assistance to the pastor in administering the sacraments. Nevertheless, the suppression was carried out. Another case concerning the suppression is found in this volume.

[*Latin ed. p. 308*]

308 CONCERNING THE CHARGES OF THE MISSES. On January 31, 1880, a SUMMARY was drawn up. The last person to die holding the position of Cathedral Canon was Michael Estevanel in the year 1622. He estab-

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lished a pious endowment for the daily Misses and for the annual anniversary Mass, to be celebrated perpetually, and for the fulfillment of these charges, he assigned a rural property called "Mas Roure." He also ordered that whatever remained, after fulfilling these charges, should be kept as a deposit with the Chapter, so that, if the income from the property was insufficient, the deposit might be used to supplement it; and if anything remained even then, it should be invested in securities or in the purchase of land, at the discretion of the Chapter. However, it should be noted that the testator used the Catalan word "coneguala," which has a double meaning: "at will" and "in favor." In the year 1855, the government seized the aforementioned property, "Mas Boure," and did not take steps to fulfill the promises made in the documents. Nevertheless, the Chapter faithfully fulfilled all the dispositions of the pious founder, and, having retained a considerable sum of money from the income of the aforementioned property, it used that sum to purchase government bonds, which were then highly valued. The income derived from these bonds, up to the year 1873, was applied to the celebration of the daily Misses and the anniversary Mass, and whatever remained was distributed among the Canons. Since these revenues do not appear to be the fruits of the property "Mas Roure," but rather the fruits of that money which was held by the Chapter, and which, according to the last words of the founder, could be used "in favor" of the Chapter itself, the Canons of the Cathedral Church petitioned the Sacred Congregation of the Council to declare this.

[*Latin ed. p. 309*]

ON THE BURDEN OF MASSES 309, [it is requested] that it be determined whether daily Masses and anniversary Masses should be applied according to justice, according to the intention of the founder, or rather, whether they can be dispensed for other uses at the discretion of the Chapter and for the benefit of the institution itself. From the accounts of the Canons, it is gathered that the actual income from the titles amounted to 1620 royal [currency] annually, and that 2000 [currency] are necessary for the complete fulfillment of the burdens.

DISPUTATION. THOSE THINGS WHICH ARE FAVORABLE TO THE CANONS.

Regarding this matter, it appears, on one hand, that in law, the Canons are not in any way obligated to fulfill the prescribed burdens. For it is a principle of law that, if the fruits designated for the fulfillment of Masses are lost, or if, without the fault of the legator, they become uncollectible, the obligation of celebrating Masses ceases. Thus, Roncala, *De valor. Missar.*, art. 47, prop. 4; Perez, *De Annivers.*, lib. 4, cap. 45, no. 8, 9; Riccius, *in praxi resol.*, 450, at the end of part 4; Tuzana, *in Summ. verb. Missa*, no.

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37; Garz, *in Summ., tract. 3, f. 40, dub. 40, no. 2.

Indeed, the burden of the Masses is attached to the legator, and to the fruits of his endowment as its foundation. Therefore, if the fruits are lacking, the burden will cease, and the obligation of celebrating Masses, because, lacking its foundation, it is necessary that what is founded upon it also collapse. *L. Nam origo ff. Quod vi aut clam, et Cap. cum Paulus 4. q. 4.*

This conclusion is confirmed by the fact that any obligation cannot exceed the intention of both parties, since it arises from the consent of the parties. *L. 4 §. 4 ff. De pactis, L. Si ego et Non omnes ff. De rebus credit., L. in vendit, ff. de contrah. empt.*

When, however, the founder assigns suitable revenues for the burden of celebrating Masses, he intends to obligate through that compensation, and the one who accepts the burden intends to obligate himself to the extent that he obtains compensating revenues; consequently, the obligation is given and accepted under a certain mode or condition, and if that condition fails, the obligation itself is dissolved. *L. Adigere § Quamvis ff. de iurepatr.*

The same must be said if the fruits, without any fault of the legator, become uncollectible, because in that case it is as if they were not present. *L. Ex consensu §. 4 ff. De appellat.*

[*Latin ed. p. 310*]

310 CONCERNING THE CHARGES OF MASSES. It seems to be beyond doubt that this matter has occurred in this case. From the will of the most pious testator, it is clear that he expressly assigned the fruits of the property of Mas Roure for the fulfillment of certain obligations. This is further confirmed by the wording of the testator's will, which begins with the assignment of the property and then specifies the obligations, thereby demonstrating that the designation was made expressly. Felm, in cap. *Super Litteris*, n. 4, *De rescript.*, Tondut. *Quaest. benef.*, vol. 2, part. 2, cap. 462, n. 5 *seqq.*, Monacel. *Formul. Legal*, part. 4, tit. 40, form. 19, n. 22, Pignat. *cons.*, 410, n. 1, vol. 9, and many others; to which the Sacred Congregation agrees, as can be seen in the instruction in which it grants bishops the faculty of reducing the charges of Masses, as Benedict XIV aptly notes in *De Syn. Dioec.*, book 13, chapter last, n. 32, and as is confirmed by the Rota in decision 55, n. 2, before Merlino, where, from the taxation of alms, which the testator ordered to be three solidi for each Mass, it was stipulated that only the surplus should be retained by the Chapter for deposit, solely for the purpose that, if at any time the fruits should be insufficient, they could be supplemented from the deposit. Indeed, it is known that the income of 1620 solidi per annum, derived from the aforementioned property, is held by the Canons; and it should be said that this income, rather than coming from the property of Mas Roure, comes from the goods

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of the Chapter. Since the testator established a law that, if there were any surplus income, after the fulfillment of obligations and the improvement of the property, it should be transferred to the Chapter, it follows that if the Chapter has not used these funds, which it could have used for the expenses of the foundation, but instead converted them into capital, then this capital and the fruits thereof should not be considered to come from the property of Mas Roure, but rather from the savings of the assets belonging to the Chapter itself.

E AGAINST WHAT IS OBJECTED TO THE CANONS. On the other hand, it must be considered that the suppression of pious legacies is entirely disapproved of by canon law, both because it is contrary to the good of the Church, and because it disregards the wills of the testators, which must be strictly observed, as prescribed by Canon 4, *Ultima voluntas*, causes 18, question 2, L. 42 *ff.*, *de verb. signif.*, L. 4 *Cod. de Sacros. Eccles. Trident. Synod*, session 22, chapter 6, *de Reform.*. Therefore, as long as there are properties,

[*Latin ed. p. 311*]

ON THE BURDENS OF THE MISSIONS: 311. By the disposition of testators, burdens are inherent, and these must always be fulfilled. This, however, seems to occur in this matter, since the funds consolidated, with which the Canons enjoy today, appear to form part of the estate bequeathed by Michael. Since these were held by the Chapter according to the terms of the will; from these, a portion was created, which subsequently accrued to the estate, and could have no nature or destination other than that of the estate itself. For the accessory follows the nature of its principal, as stated in L. fin. Cod. De non num. pecun., and L. Etiam. Cod. De iur. Dot., Reg. Accessorium De reg. iur. in 6. Indeed, it is not easily believed that the Chapter members, aware that these fruits belonged to them, left them in the Chapter treasury, to be later exchanged for a share, for the benefit of their successors. Therefore, if Fermo is indeed legally entitled, as it ought to be, since the matter concerns a pious cause, the Masses, then the broadest interpretation must be given, as stated in Bordon. de Legat, pious cap. 1, no. 125, and S. C. in Casert. Benef. 26 Nov. 1796 §. It appears that in the interpretation of the will, that word must be admitted which favors the fulfillment of the legacy, and which is consistent with the will of the founder. This is evident at first glance, so that, with all other conditions fully met, the Chapter was indeed granted the option of determining the best way to render the revenues of the same property more productive, but not at all to convert them to its own use. This interpretation is suggested by the fact that the legacy, from the fruits derived from the consolidated funds, and from the revenues acquired, amounted to a considerable sum up to the year 1873. It should not escape notice that the following must be considered: L. Minime ff. De leg., L. si de interpret., as stated in cap.

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Cum venissent ubi Butr. n. 2 De instit., Cap. Cum Dilectus De Consuet. Ludovic, conclus. 88 vers. Furthermore, Gratian. Discept, for. cap. 45 n. 62 introduces a new contract and declares the will of the contracting parties; Gratian, loc. cit. cap. 675 num. 14, and in the interpretation to be followed, even by improperly using words, as stated by Buir.

[*Latin ed. p. 312*]

312 ON THE OBLIGATION OF MISSES. Chapter. As the esteemed Gratian states in *De consuetudine*, loc. cit., n. 32, and as is required by the decree *Surd.*, consil. 220, n. 3, lib. 2, Gratian, loc. cit., cap. 746, n. 24, and cap. 756, n. 25, Menoch. cons. 21, n. 25. Furthermore, the Capitulars themselves testify regarding the observance of this matter. Moreover, it must not be overlooked that, perhaps due to the negligence of the Chapter, the respondents may have suffered losses. For neither the word nor the deed appears in the records concerning the diligence shown by the Chapter in obtaining the signed statements from the respondents, regarding the obligation for the *fundus* usurped by the aforementioned. Having briefly considered these matters, it was deemed necessary for the Most Reverend Fathers to clarify the following: Whether the Chapter is obligated to satisfy the obligations of Masses in this case.

RESOLUTION. The Sacred Congregation, after deliberation on January 3, 1880, decided to respond: Affirmative, regarding the established revenue.

FROM WHICH THESE CONCLUSIONS ARE DRAWN:

I. The wills of testators must not be disregarded; therefore, the suppression of the bequests of the pious is entirely disapproved by the Holy Canons.

II. Hence, whenever the words of testators contain some ambiguity, Doctors indicate that an interpretation favorable to the pious cause should be given, especially if the matter pertains to Masses.

III. And therefore, whatever the nature of the *fundus*, if obligations for Masses are attached to it by the will of the testator, the law and reason dictate that such obligations must be fulfilled.

IV. It does not seem possible to argue that the *fundus* does not exist in any way in this matter; for the share, created by the revenues of the same *fundus* through the bonds, assumes the nature of the former *fundus*, and is directed towards the same end.

V. That the excess of revenues should be ceded in favor of the canons, neither a long-standing interpretation by them indicates, nor do the words

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of the testator clearly state; rather, it appears that he intended nothing else.

[*Latin ed. p. 313*]

ON THE WEIGHT OF THE MASSES 313, having left the matter to discretion, the best method for ensuring that the revenues of the bequeathed property would yield fruitful returns. VI. The interpretation derived from observance is of the greatest importance, because, by its very nature, it resolves all ambiguities and declares the will of the contracting parties. CANONICAL GRANT. January 31, 1880. In the year 1514, the Supreme Pontiff Leo X, concerning this matter, issued an Apostolic Bull, erecting the Church of the Blessed Virgin Mary under the title of Peace, located in the city of C., into a Collegiate Church, and establishing a Chapter, which consisted of six Dignities, two Offices, twenty-nine simple Canons, and ten Beneficiaries or Mansionaries. He assigned a distinct provision to each, and appointed a Prefect to all, who was constituted the first dignity of the thus erected Collegiate Church. The Supreme Pontiff also decreed that the right of presentation to the aforementioned provisions should belong to the Chapter, with the exception of the Prefectship, for which the right of patronage was reserved in favor of Ferdinand de Ursinis Campanile Cernitis and his successors; nor, with the exception of the Archdeaconate, the second dignity of the Chapter, for which the same right of patronage was granted to Melchior de Guerrieris and his heirs and successors. Anna. 5. 2. 5. The Supreme Pontiff Clement VII, by another Bull, elevated the Collegiate Church of C. to the status of a Cathedral Church, and made it equal in principal rank to the existing Cathedral. Furthermore, he suppressed the Prefectship, thus making the Archdeaconate the first dignity after the Pontifical dignity, reserving for the Chapter the rights or privileges that it had previously enjoyed. HOW, THEREFORE, THE COLLATION OF CANONS AND PROVISIONS WAS CARRIED OUT IN SUBSEQUENT TIMES, UP TO THE YEAR 1688: A SUMMARY OF THE FACTS.

[*Latin ed. p. 314*]

314 The right to confer canonical prebends, due to the loss of documents, has faded into obscurity. This much is certain: in the year 1546, the institution was granted by the Bishop, presented by the Chapter; and from the year 1688 to the year 1774, the collation of vacant prebends in the Apostolic months was carried out by the Dataria; in the remaining months, the Chapter exercised the right of presentation, and the Bishop conferred the institution. However, in that age, when a dispute arose concerning the right of presentation for a certain vacant prebend, the Syndic of the City, C., appealed to King Ferdinand IV, requesting that the Chapter be restored to the right of presentation for all and every month of the year, a right granted to it by Leo X; and indeed, the desired outcome was achieved, with royal decrees issued on July 11, 1778, and October 14, 1797, to that effect. Soon

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after, the time of the French occupation in the Kingdom of Naples arrived, during which the rights of the Pope, the Bishop, and even the Chapter itself were suppressed, while the King himself usurped these rights. With the restoration of tranquility and peace, the Chapter remained in this right until the year 1818. At that time, an agreement was initiated between the Supreme Pontiff, Pius VII, and the King of both Sicilies, and it was stipulated therein that, in the future, the canonical prebends of cathedrals and collegiate churches would be conferred by the Apostolic See for the first half of each year, and by the Bishops for the second half. However, when a dispute arose again between the Archbishop and the Chapter concerning the interpretation of this article, the matter was brought before the King, who, after hearing the report of the Executive Commission of the Concordat, dismissed it with a royal decree on May 2, 1824, in which he cautioned the Chapter against applying a resolution previously issued, namely, that while the first half of each year remained under the favor of the Apostolic See, the Chapter would present candidates for the vacant prebends in the first four months of the second half of the year; the two last months of the year would be subject to the free collation of the Archbishop. In this manner, with the issue resolved, matters proceeded peacefully until the year 1860, when the province of Naples was usurped by the Piedmontese government. In that age, the Chapter...

[*Latin ed. p. 315*]

CANONICAL RIGHTS, PARAGRAPH 315. The minister, commonly called the "Guardasigilli," appealed, seeking to assert his right to the presentation for all benefices. The minister petitioned the Chapter, and maintained his asserted rights. Therefore, the Archbishop brought the Chapter to law, but in the first and second instances, the case was lost, and in the supreme tribunal, commonly called the "Cassazione," the dispute is still under consideration. In this manner, the Chapter has availed itself of this right, although the Archbishop has never granted permission for the presentation. The situation was such that the aforementioned Most Reverend Prelate, in a report concerning the state of his Church to the aforementioned Sacred Congregation, requested that the case be examined and decided by this Sacred Congregation.

RIGHTS OF THE BISHOP. Furthermore, in opposition to the alleged right of the Chapter of the Cathedral Church, the Archbishop invokes the decree of the Council of Trent in Session 25, chapter 9, concerning Reforms, where all privileges previously existing regarding the election to vacant benefices are abolished, and the right of collation is restored to the Ordinaries. Therefore, he concludes, since the Fathers of Trent revoked all privileges granted concerning the right of presentation, the Chapter's claim, based on privileges previously granted by Pope Leo X, has become very weak. Even more so, because the Supreme Pontiff Leo X did not grant any

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privilege to the Chapter in his Bull, but only stipulated what is established by law. Since the election to canonical positions in collegiate churches belongs by common law to the church itself. The witness to this doctrine is Cardinal De Luca, *De Beneficiis*, book 17, number 5: "Therefore, to explain the quality of the election, two things are to be considered, namely, first, the discipline of common law, which some deduce from the disposition of the text in chapter *Ex transmissa de renunc.* and chapter *Significatum de praebend.* and concord. as, in collegiate churches, the provision of canonical positions and benefices pertains to the church itself, or the Chapter. Garz, *De Beneficiis*, part 5, chapter 4, number 58 and following; *Rotuli in rec. decis.* 157, number 22, part 6; decision 133, number 3, part 2."

[*Latin ed. p. 316*]

316 OF THE POWER TO CONFER CANONICAL BENEFICES. If, therefore, no privilege was granted to the Chapter by Pope Leo X through the Bull of erection of the Collegiate Church, it follows that no such privilege was subsequently confirmed by Pope Clement VII concerning this matter. Indeed, if the Chapter transforms the Collegiate Church into a Cathedral, it loses the right to confer canonical benefices. For it is established in law that, with changes in circumstances, any rights and privileges may vanish. Thus, the Sacred Roman Rota, in decision 1445, number 2 and 7, *Corpus Seraphino*, states: "When the circumstances change, the law changes, and its effects." Moreover, the Chapter cannot find refuge in the words of the Bull of Clement VII: "that they may possess, enjoy, and exercise the privileges and exemptions, the immunities, the graces, the favors, and the indulgences"; for the Archbishop holds that these words do not refer to the right of election or presentation, which belonged to the Chapter by right, but rather to other privileges, indulgences, and immunities granted by Leo X to the same Chapter. This is made even more evident when one considers the words of the Clementine Bull granting: "For the time that a Bishop is present, all and each of those things which other Cathedrals, and their Bishops, and, in general, other cities, dioceses, use." Through these words, the Archbishop states that the Bishop of C. is granted all those rights which are granted to other Bishops by common law. Indeed, by common law, the Bishop is the ordinary bestower of canonical benefices and endowments of his Church: Canon 1, qu. 1, chapter 10: "Whatever things belong to the Church, it is fitting that they be governed and dispensed with by the judgment and authority of the Bishop, to whom the souls of the entire people seem to have been entrusted." And the Council of Lateran, I, canon 7: "No Archbishop, or Archpriest, or Prefect, or Dean, shall grant any benefice to the Church without the judgment or consent of the Bishop; indeed, as the holy canons have established, the dispensation of ecclesiastical affairs remains in the judgment and authority of the Bishop."

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Moreover, the private right of the Chapter, with regard to the conferring of vacant benefices, is excluded from common law, so that neither when the see is vacant, nor at any other time, can the Chapter or the Vicar of the Chapter...

[*Latin ed. p. 317*]

CANONICAL RIGHTS: 317. The titular [bishop] may confer those [benefices] that are of free collation, but he can only grant the institution [to a candidate] presented by the patrons, as is the case after the disposition of chapter 4, title 6, book 3 of the Decretals, as one and all the Canonists teach. JURISDICTION OF THE CHAPTER. On the other hand, the Canons of the Cathedral Church contend that Leo X, through the erection of the Collegiate Church, granted to the same Chapter the privilege of electing to dignities, canonries, and prebends that become vacant in any month of the year, except only for the office of Prefect and Archdeacon. They state that this privilege was confirmed by Clement VII, who erected the same Collegiate Church into a Cathedral. To prove this, they invoke even the Clementine Bull itself, in which it is decreed: "We grant that the aforementioned Chapter may enjoy, possess, and have the privileges and exemptions of liberty, immunities, graces, favors, and indulgences, as they were accustomed to and enjoyed before the erection [of the Cathedral], both through Apostolic concessions and through other means, and may in the future enjoy them, as We grant." However, both the jurisdiction of the chapter and the right to confer canonries in any month of the year were considered to be subject to the approval of the chapter. Therefore, this right, too, was confirmed by the Clementine decree. With this established, the Canons say, the only difficulty that seems to arise from article X of the aforementioned Convention is entirely to be dismissed; for the Convention states a general law for the entire kingdom, which does not derogate from the privileges of private individuals, and does not invalidate the right of third parties, unless it makes express and special mention of it. Indeed, the Canons say, it is a principle of canon law, which is not less common than the other, that subsequent laws are to be understood and applied with the limitations and exceptions of prior laws: *De Legib.* 26, 27, and 28 ff.; Pothier in Pandects, book 1, title 3, § 43, note d. Therefore, the Chapter members conclude, the aforementioned Convention must be understood with the exceptions and limitations arising from the existing privileges of private individuals; consequently, it cannot be applied in this matter, and therefore the right to nominate candidates for vacant canonries belongs to the Chapter in all months.

[*Latin ed. p. 318*]

318 CONCERNING THE RIGHT TO CONFER CANONICAL POSSESSIONS: It is not a new thing in Canon Law that Canons are subject to the

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authority of the Chapter, concerning the granting of benefices, whether by foundation, by custom and prescription, or by special privilege, as Van-Espen teaches. *Ius Ecclesiae*, part 2, section 3, title 4, §§ 18 and 19. Barbosa de Canon., chapter 54, in chapter 31 concerning elections, in which Innocent III commands the Bishop of Florence to maintain the Chapter of Vulteranen in almost complete possession of the right to elect to vacant canonical positions. Having considered both of these, it was deemed prudent by the Fathers to resolve the following doubt: To whom belongs the right to confer canonical possessions in this case?

RESOLUTION: The Sacred Congregation, having considered the matter, on the 31st of November, 1880, judged it fitting to respond: Yes, affirmatively, according to the form of the decree of May 2nd, 1824 (1).

FROM WHICH THE FOLLOWING IS GATHERED:

I. The Council of Trent, Session 25, chapter 9, concerning reforms, abolished all privileges previously existing in favor of Chapters, regarding the right to nominate, elect, and present candidates for vacant benefices, and established that they should be conferred freely and with full effect by their respective superiors.

(1) In the year 1818, a convention was initiated between the Apostolic See and the King of Sicily. In this convention, concerning the granting of all benefices, an agreement was reached that, during the first six months of each year, the granting would be done by the Apostolic See, and during the remaining six months by the Bishops. Since controversies frequently arose between Bishops and Canons who were deprived of all rights concerning the granting of benefices, the executive commission of the Concordat established, on May 2nd, 1824, that even the Chapter, about which the question arises, could confer benefices for four months. Therefore, according to this decree, and confirmed by the present resolution, the Pope confers benefices for six months, the Canons for four months, and the Bishops for the remaining two months of the year.

[*Latin ed. p. 319*]

IURIS CONFERENDI CANONICATUS 319. It is, indeed, by common law that Bishops are the canonical collators of benefices and the ordinarys of their church. III. Moreover, by common law, Canons do not have the right to confer benefices freely when the see is vacant, but they can only grant institution upon presentation by the patrons. IV. Even if the Canons had this right in the diocese, they nevertheless lost it after the agreement between the Apostolic See and the King of Sicily, by which it was established that all canonical institutions must be conferred by the Apostolic See and by the Bishops to each other within six months. V. It cannot be said that the rights of the Canons are revived by prescription, since the aforemen-

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tioned agreement was abolished by the Italian government; for if this were admitted, common law and the regulations of the Chancery would always remain. EX 3. CONGREG. INDULGENTIARUM DECRETUM. Whereas, when Indulgences are customarily granted, the practice of performing the Via Crucis without interruption is tolerated, and the crosses may be made of stone and iron. On September 18, 1880. The Most Blessed Father Bishop of Valentinen, humbly prostrate before the sacred feet, declared that on February 11, 1822, through special faculties, the Station of the Via Crucis, called "grand Calvaire," located in the town of Romam, in the aforementioned Diocese, was blessed and endowed with customary Indulgences; and that it consists of 34 stations, which represent the principal mysteries of the Passion of Our Lord Jesus Christ, as can be gathered from the authentic document. But...

[*Latin ed. p. 320*]

320 DECREE: The Ordinary of the Diocese, with due regard for the decree of the Holy Congregation of Indulgences of November 15, 1878 (1), in which it was established that the crosses of the stations should be made of wood; whereas those that are found in the city of Romans are of iron or stone; and since any change could give rise to wonder or scandal among the faithful; therefore, he implores Your Holiness to deign to grant that the aforementioned crosses may remain as they are now, so that the faithful may not suffer any detriment with regard to the Indulgences granted for the pious exercise of the Way of the Cross; and at the same time, he requests that, for the sake of a long journey through places, not necessarily convenient, the pious exercise of the Way of the Cross may be completed with some interruption. His Holiness, in an audience held on September 18, 1880, with the undersigned Secretary, kindly responded: that the iron and stone crosses may be tolerated for the acquisition of the Indulgences of the Way of the Cross; furthermore, with regard to the requested interruption, His Holiness remitted the requests to the judgment and prudence of the Ordinary of the Diocese, with the necessary and appropriate faculties, only with the condition that the interruption not be too lengthy. This decree is valid forever, without prejudice to anything to the contrary. Given September 18, 1880. DECREE. FR. A. TH. M. CARD. MARTINELLI. P. Delicati, Secretary. The Consultor, having been asked to express his opinion regarding the requests of the Bishop, issued the following observations: 1. As far back as the year 1732, a decision was made regarding these stations of the Way of the Cross in the town of Romans in the Sacred Congregation of Indulgences. Even then, the Ordinary of the place testified that not only the faithful of the place, but also those from the surrounding area frequently performed the exercise of the Way of the Cross, and that, due to the long journey and the many stations, it took about three hours to complete; therefore, in order to increase the devotion of the faithful, he requested that a plenary

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Indulgence be granted for this exercise on certain days. OPINION OF THE CONSULTOR. (1) This decree is found in Vol. Xl, page 401 of these annals.

[*Latin ed. p. 321*]

DECREE 321, 2. The Holy Congregation for Indulgences, concerning this petition, sought the opinion of a Consultor, who judged that the grace should be denied. He presented two reasons for his negative opinion: 1. Because the method, or form, for the practice of the Stations of the Cross, having already been approved, must be faithfully observed by all, without alteration; 2. And the principal reason, it seemed to him, was that the Stations of the Cross are to be established in churches, and not in public places, according to the opinion of the Consultor. The Holy Congregation responded: Negatively.

3. The decree of the Holy Congregation was not published, or at least, it did not have its effect: for, after approximately one hundred and fifty years, a Bishop, who certainly did not know this decree, reports the same things about these stations and the frequency of the people, as his predecessor. Without a doubt, they also feared then that suppressing the stations would scandalize the Christian people and diminish devotion.

4. Now, it must be considered whether the decree of this Holy Congregation from the year 1732 should simply be confirmed, or whether it is fitting to depart from it.

5. I frankly confess that the opinion of the Consultor from the year 1732, and the decree of the Holy Congregation approving it, do not please me, and I suggest several reasons for departing from it. The second reason, which seemed most important to the Consultor, does not hold true. He states that the Stations of the Cross are to be erected in churches, and not in public places. However, in Theodorus a Spiritu Sancto, volume II, page 331, there is a declaration concerning the observance of the stations in their erection, and there, under number 3, it is written: "In those places, in which they would wish to erect, outside the church, as is the custom among many convents of that Order" (of the Friars Minor).

6. Another reason of the Consultor was that uniformity should be maintained in the erection of the Stations of the Cross. But I would like to point out that the oldest Stations of the Cross exist in the town of Buschbell: they were erected in the year 1515, as the Bishop writes, during the pontificate of Pope Leo X, who is said to have granted many indulgences. Therefore, these Stations of the Cross have existed for four centuries, except for 35 years, and are scarcely older in the entire world; which is all the more remarkable, because wars and internal conflicts in France have destroyed almost all sacred monuments, Acta, volume XIII, page OLI, 21.

[*Latin ed. p. 322*]

322 DECREE: But the terror passed, and devotion to the Way of the Cross

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returned. During the time of Leo X, the general decrees had not yet been issued, by which the institution of the Way of the Cross was circumscribed by rules, and it is by no means certain that the Ways of the Cross existing previously were abolished by subsequent decrees, or that the privileges and graces granted to them were abolished. Long after Leo X, Innocent XI (in the year 1686), Innocent XII (1692), Benedict XIII (1726), Clement XII (1731), and Benedict XIV, by their constitutions and decrees, established the norms to be observed in establishing stations of the Way of the Cross: and these decrees, indeed, must be observed inviolably from the time of their publication: but they do not annul what was valid before. 7. Therefore, whether one considers the antiquity of this Way of the Cross, or the devotion of the people, which would suffer harm from its suppression, it seems that the petition of the Bishop should at least be substantially admitted. 8. Now let us consider the petition of the Bishop more closely. He requests that all the faithful may enjoy the Indulgences that are granted to the ordinary Way of the Cross, without introducing any changes. Certainly, the 34 stations must be preserved, so that no scandal arises and the devotion of the people does not suffer harm. It may also be permissible, in a particular and unique case, to allow wooden crosses or stone crosses to be retained in place of the fire. But something must be decided regarding the Indulgences; for it is not certain what Indulgences were granted to the Ways of the Cross. It can be granted without difficulty the Indulgences that are granted to the ordinary Way of the Cross: and this is what the Bishop requests. But he who visits not only 14 stations, but 34, and spends about three hours in the visitation (as is stated in the decree of the year 1732), also deserves to gain some Indulgences in the visitation of the other 20 stations. But regarding these Indulgences, I want to speak more clearly in the second petition of the Bishop. Since the Bishop in the first petition requests nothing other than that the faithful may enjoy the Indulgences of the Way of the Cross if they visit the 34 stations as they have done up to now, without introducing any changes, it could simply be answered according to his request: then no declaration would need to be made; it would be sufficient to say that...

[*Latin ed. p. 323*]

DECREE 323: If the question were posed, an answer would be given, namely that this Via Crucis has been approved and enjoys the Indulgences granted to those who complete the Via Crucis.

9. I prefer the second request of the Bishop, which he makes for the case in which the first [request] is not admitted. "If it is impossible," the Bishop writes, "either by himself or through a delegate, to privately bless wooden crosses, and to place these blessed crosses upon the fourteen stations already erected, in the best way possible, so that no scandal arises." I find nothing that can be opposed to this request. If the Bishop blesses fourteen wooden crosses and places them at the stations, the Via Crucis is erected

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in the customary manner. It seems only necessary that an inscription be affixed to these fourteen stations, as is done in privileged altars. In this case, it is by no means necessary that all the faithful visit all thirty-four stations; but he who, according to the custom observed for almost four centuries, visits all the stations, deserves to gain some partial Indulgences even for only twenty stations.

10. In the decree of the Holy Congregation from the year 1732, it is stated that the visitation of thirty-four stations should not be completed in less than three hours. Therefore, the Bishop rightly writes that it is very difficult to traverse all the stations in one go, and he requests that pious Christians may be able to complete the exercise of the Via Crucis with an interval of time between. This request is just, especially for those who visit all the stations; but so that no distinction is made between the first and the others, it seems that it should be granted to all, all the more because such a practice already exists.

[*Latin ed. p. 324*]

324 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS: INSTRUCTION to the Ecclesiastical Courts concerning the expeditious handling of economic matters in disciplinary and criminal cases of Clergy. For Ecclesiastical Courts regarding the manner of proceeding economically in the cases of clergy, both disciplinary and criminal. June 11, 1880. June 2, 1880. This Holy Congregation, having maturely considered the present condition of the Church, which almost everywhere hinders its external manifestation of its action on ecclesiastical matters and persons, and also reflecting on the lack of means suitable for the regular organization of the Courts, has determined to grant the Ordinaries of the places the express authority to authorize the Ordinaries to make use of the most economical forms in the exercise of their disciplinary jurisdiction over Clergy. And in order that every reason of justice may be preserved, and that the canonical regularity and uniformity of proceedings may be maintained, it has been deemed opportune to issue the following norms, to which the Courts must adhere. The Ordinary has the pastoral duty of taking care of the discipline and correction of the Clergy dependent on him, of watching over their conduct, and of using the canonical remedies.

[*Latin ed. p. 325*]

INSTRUCTION 325, in order to anticipate and eliminate disorders among them, using canonical means to prevent and eliminate disturbances within the order. II. II. These remedies are either preventative, or repressive, or medicinal. The first are directed to prevent evil from occurring, to remove the incentives for scandal, voluntary occasions, and the proximate causes of wrongdoing. The second aim to bring the

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guilty to their senses, and to repair the consequences of their crime. Of these remedies, some are preventative, others are repressive, and still others are medicinal. The former are directed to prevent evil from happening, to remove the stimuli of scandal, voluntary occasions, and the proximate causes of wrongdoing. The latter have the purpose of bringing the guilty to their senses and repairing the consequences of their crime. III. III. It is the conscientious discretion of the Ordinary to apply these remedies according to the prescriptions of canon law, according to the gravity of the cases and circumstances. The conscience and prudence of the Ordinary are incumbent in the application of these remedies, according to the prescriptions of the canons, and the gravity of the cases and circumstances. IV. IV. Among the preservative measures, spiritual exercises, admonitions, and precepts are primarily to be considered. Among the means that preserve, spiritual exercises, admonitions, and precepts should be especially employed. V. V. Such measures must be preceded by a summary investigation of the facts; of which it is necessary that the Ordinary take note, in order to be able to proceed, if necessary, to further investigations, and also to report to the higher authority in the event of a legitimate appeal. These provisions must be preceded by a summary knowledge of the facts, which must be noted by the Ordinary, so that he may proceed to further investigations, as may be necessary, and so that he may inform the higher authority in the event of a legitimate appeal.

[*Latin ed. p. 326*]

326 INSTRUCTION VI. VI. The canonical admonitions are given either in a paternal and secret manner (even by letter or through an intermediary), or in a legal form, but in either case, it must always be evident from some act that the admonition has been carried out. *Canonicae monitiones fiunt sive in forma paterna et secreta (etiam per epistolam aut per interpositam personam) sive in forma legali, ita tamen ut de earumdem executione constet ex aliquo actu.* VII. VII. If the admonitions prove fruitless, the Ordinary instructs the Curia to order the delinquent to observe a similar precept, explaining therein what the person addressed must do or must not do, with the threat of the corresponding ecclesiastical penalty, which will be incurred in the event of transgression. *Quatenus infructuosae monitiones evadant, Ordinarius praecipit Curiae, ut delinquenti analogum iniungatur praeceptum, in quo declaretur quid eidem agendum aut omittendum sit , cum respondentis poenae ecclesiasticae comminatione, quam incurret in casu transgressionis.* VIII. VIII. The precept is declared to the person concerned by the Chancellor before the General Vicar; or in the presence of two ecclesiastical witnesses, or laypersons of proven integrity. § 1. The document is signed by the parties present, and also by the person to whom the precept is addressed, if he so wishes. § 2. The General Vicar may require

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the witnesses to swear to maintain secrecy, if the nature of the matter in question prudently requires it. *Praeceptum intimatur praevento a Cancellario coram Vicario G-enerali ; sive coram duobus testibus ecclesiasticis aut laicis probatae integritatis. § 1. Actus subsignatur a partibus praesentibus et a praevento quoque, si velit. § 2. Vicarius Generalis adiicere valet iuramentum servandi secretum, quatenus id prudenter expetat tituli indoles, de quo agitur.* IX. IX. As for the penal measures, the Most Reverend Ordinaries should note that with the present instruction... *Quoad poenalia media, animadvertant reverendissimi Ordinarii, praesenti instructione haud...*

[*Latin ed. p. 327*]

327. The solemnities of judgments have been derogated from, by the sacred Canons, by Apostolic Constitutions, and other ecclesiastical provisions, to the extent that the same may be freely and effectively applied; but the economic forms intend to provide for those cases and courts in which solemn procedures cannot be, or do not appear to be, expedient.

Furthermore, the extrajudicial remedy based on informed conscience for hidden crimes, which was decreed by the Holy Council of Trent in chapter 1, session 14, concerning Reform, retains its full force, to be adopted with those rules and reservations which the Holy Congregation of the Council has consistently observed in the interpretation of said chapter in numerous resolutions, and especially in Bosnia and Sirmium, December 20, 1873.

(1) X. X. When it is necessary to proceed criminally, whether for a violation of a precept, or for common crimes, or for transgressions of the laws of the Church, the process may be compiled in summary forms and without the pomp of judgment, always observing the essential rules of justice.

XI. XI. The process is instituted either ex officio, or in consequence of a petition, complaint, and notice received by the court in another manner, and is brought to a conclusion with the aim of discovering the truth with all diligence and prudence.

[*Latin ed. p. 328*]

INSTRUCTION 328: Regarding confidentiality, the discovery [of information] must be concealed, and knowledge of the crime, of the truth, and of having knowledge of the guilt or innocence of the accused, must be kept secret, lest the guilt or innocence of the accused be revealed.

XII. The compilation of the process can be entrusted to a righteous and suitable Ecclesiastic, assisted by the Notary.

XIII. Each court must have its own fiscal procurator, for the sake of justice and the law.

XIV. For necessary summonses or notifications, if the services of the court's messengers are not available, they may be presented by a qualified person, who shall provide proof of delivery; or they may be sent by registered mail through the postal service in places where such a postal

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system is in use, and a certificate of presentation, receipt, or refusal shall be requested.

XV. The basis of the criminal fact can be established by the exposition given in the validated process, by authentic information, or by extrajudicial confessions, or by testimonial depositions; and as for the title of transgression of a precept, it is established by a new exposition of the decree and the act of indictment.

[*Latin ed. p. 329*]

329. The summoning and execution of the act of notification are carried out in the manner expressed in Articles VII and VIII.

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329. XVI. In order to establish the culpability of the accused in this specific case, it is necessary to have legal proof, which must contain elements that demonstrate the truth, or at least induce a moral conviction, removing any reasonable doubt to the contrary.

329. XVI. In order to establish the culpability of the accused in this specific case, it is necessary to have legal proof, which must contain elements that demonstrate the truth, or at least induce a moral conviction, removing any reasonable doubt to the contrary.

329. XVII. The persons who it is necessary to examine are always heard separately.

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329. XVIII. Witnesses, whether for the prosecution or for the defense, when there are no legal obstacles, must be heard under oath, which can be extended, if necessary, to the obligation of secrecy.

329. XVIII. Witnesses, whether for the prosecution or for the defense, when there are no legal obstacles, must be heard under oath, which can be extended, if necessary, to the obligation of secrecy.

329. XIX. If witnesses are located far away or in another Diocese, their examination is requested as assistance from the ecclesiastical authority of that place, along with a summary of the facts being sent to that authority; and the requested authority responds to the request, observing the norms of this Instruction.

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329. XX. Whenever witnesses are indicated for facts and circumstances

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essentially relevant to the case, those who are to be examined;

[*Latin ed. p. 330*]

INSTRUCTION 330 Regarding the procedure of the Cause, and those who cannot be summoned, or who, being summoned, refuse to appear, or who, being invited, do not appear, it is to be considered whether it is fitting to summon them, or whether it is deemed fitting to notify them, either because they have been summoned and refuse, or because they are mentioned in the documents, and it is necessary to supplement their deficiency by depositions of other witnesses, for the reason that these witnesses know what is required, or in another way, to be informed of what is being sought. Once everything that is necessary and pertinent to establishing the fact and the responsibility of the accused has been gathered, the accused is summoned for examination.

XXII. In the summons, if prudence does not forbid it, the charges brought against him are fully explained, so that he may be able to prepare to answer them. In the summons, unless prudence forbids it, the charges brought against him are fully explained, so that he may be able to prepare to answer them.

XXIII. However, if, because of the nature of the accusations, or for other reasons, it is not prudent to explain them in the summons, he is merely summoned to appear in the Cause, which concerns him as the accused, to clear himself.

XXIV. If he refuses to appear, the summons is repeated, in which a reasonable and peremptory deadline for appearing is set for him, and he is notified that if he still refuses to obey, he will be considered contumacious; and for such a person, a judgment will be held.

[*Latin ed. p. 331*]

331. Concerning contumacy: Thus it will be considered, provided that, without demonstrating a legitimate impediment, he disregards even this summons. In fact, it will be judged that, without a proven legitimate impediment, he has also disregarded this summons.

XXV. If he appears, he will be heard in the examination; and if he makes statements of some importance, these should, as far as possible, be fully explored. He appears, is heard in the examination; and to the extent that he makes statements of some importance, these should, as far as possible, be fully explored.

XXVI. Then the proceedings will proceed to the presentation of the criminal act and the resulting conclusions, in order to consider the accused guilty and subject to the corresponding canonical penalties. Then the proceedings proceed to the presentation of the criminal act and the resulting conclusions, in order to consider the accused guilty and subject to the corresponding canonical penalties.

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XXVII. Having in this way the accused fully aware of what exists in the records against him, in addition to answering, he can also avail himself of the right he has to defend himself. When the accused, in this way, has full knowledge of what exists in the records against him, in addition to answering, he can also avail himself of the right he has to defend himself.

XXVIII. He can also, if he requests it, obtain the setting of a term for presenting his defense in writing, especially when, due to the provisions of Article XXIII, he has not been able to prepare for his answers in his defense. He can also, if he requests it, obtain the setting of a term for presenting his defense in writing, especially when, due to the provisions of Article XXIII, he has not been able to prepare for his answers in his defense.

XXIX. Finally, upon completion of the process, the compiler of the records prepares a summary. *Expleto processu, actorum instructor, restrictum conficit.*

[*Latin ed. p. 332*]

332 INSTRUCTION concerning the essential conclusions thereof. XXX. XXX. On the day that the cause is presented, the accused has the faculty of being represented and defended by another priest or by a lay advocate, previously approved by the Ordinary. XXXI. XXXI. If the accused refuses to appoint a defender, the Ordinary provides for one to be appointed for him, of his own accord. XXXII. XXXII. The defender, with due discretion, becomes acquainted with the proceedings and the restrictions in the Chancery, so that he may be prepared to carry out the defense, which may be presented beforehand, before the presentation of the cause, in manuscript form. And he is also subject to the sworn obligation of secrecy, should the nature of the cause require it, according to the judgment of the Ordinary. The defender carefully acquires knowledge of the proceedings and the restrictions in the Chancery, so that he may be prepared to carry out the defense, which may be presented beforehand, before the presentation of the cause, in writing. He is also subject to the obligation of a sworn secret, should the nature of the cause require it, according to the judgment of the Ordinary. XXXIII. XXXIII. Then, the proceedings and the restrictions are transmitted to the fiscal prosecutor, so that he may perform his duties of office; both are then given to the Ordinary, who, having obtained full knowledge of the cause, sets a day for its discussion and resolution, taking care to inform the accused of this. Then, the proceedings and the restrictions are transmitted to the fiscal prosecutor, so that he may perform his duties of office; and then both are given to the Ordinary, who, having obtained full knowledge of the cause, sets a day for its discussion and resolution, taking care to inform the accused of this.

[*Latin ed. p. 333*]

INSTRUCTION 333 XXXIV. XXXIV. On the appointed day, the cause

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is presented before the general vicar, with the participation of the fiscal procurator, the defender, and the chancellor.

XXXV. After the fiscal opinion and the defensive arguments, the judgment is pronounced, and the operative part is dictated to the chancellor, with an explicit mention, in the case of condemnation, of the canonical sanction applied against the accused.

XXXV. Post votum Procuratoris Fisci et deductiones defensionis profertur sententia, dictando dispositivam Cancellario, cum explicita mentione, in casu damnationis, canonicae sanctionis, accusato applicatae.

XXXVI. The judgment is notified to the aforementioned, who may appeal to the superior ecclesiastical authority.

XXXVI. Sententia indicitur prae vento, venuto, il quale può interponere appellationem interponere poappello all'Autorità ecclesiastica test ad Auctoritatem Ecclesiasuperiore.

XXXVII. For the appeal, the norms established by the Constitution *Ad militantes* of the same Most Holy Pope Benedict XIV, March 30, 1742, and the others issued by this Holy Congregation by Decree of December 18, 1835, and by the Circular of August 1, 1851, are observed.

XXXVII. Pro appellatione servantur normae statutae a Constitutione Ad militantes s. m. Bened. XIV 30 Martii 1742, aliaeque emanatae ab hac s. Congregatione Decreto 18 Decembris 1835 (1) et Littera circulan diei 1 Augusti 1851. (1) En in commodum lectorum decretum huiusmodi. Haud referimus litteram prolixam diei 1 Augusti 1835, quoniam praecipuae eiusdem praescriptiones in praesenti Instructione relatae nobis videntur.

DECREE CONCERNING CRIMINAL CAUSES. Not long ago, certain rules were prescribed by this Holy Congregation, through discussions and consultations with Bishops and superiors of Religious Orders, for the proper and expeditious resolution of criminal causes, which are brought before the same Holy Congregation on appeal by Bishops or Ordinaries. These prescriptions, since the obstacles that had partially hindered their execution have been removed, it seemed fitting to the Most Reverend Fathers in a meeting held on the 5th of January, 1835, to explain them more fully, and with the consent and approval of His Holiness, Pope GREGORY XVI.

[*Latin ed. p. 334*]

334 INSTRUCTION XXXVIII. The appeal must be made within ten days from the notification of the sentence; if this term is unprofitably elapsed, the sentence itself may be executed. It is necessary to promulgate this, so that it may be observed with the utmost care by all to whom it pertains. The following matters are to be observed:

I. To those condemned by criminal judgment in Episcopal Courts, a space of ten days is granted, during which they may appeal to the

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Congregation of Bishops and Regulars.

II. These ten days are counted not from the day on which the sentence was pronounced, but from the day on which the accused or his defender was notified thereof by the Advocate.

III. If, at the expiration of this time, the accused or his defender has not appealed, the Bishop will execute the sentence pronounced by him.

IV. If an appeal is lodged within ten days, the Episcopal Court shall immediately transmit to the aforementioned Congregation a signed copy of the entire case, namely:

1. The process itself completed in the Court.

2. A summary, or concise exposition, of those things which emerge from the same process.

3. The defenses presented for the accused.

4. Finally, the sentence pronounced.

V. The Court shall notify the accused and his defender that the appeal must be pursued before the aforementioned Congregation.

VI. If no one appears, or if the proceedings of the appeal are negligently or maliciously delayed, a suitable time will be determined by the Congregation; if this time is unprofitably elapsed, the case shall be deemed abandoned, and the sentence of the Episcopal Court shall be ordered for execution.

VII. A summary of the process, which is prepared by the reporting judge, shall be delivered to the accused, or to him who has undertaken his defense.

VIII. Allegations, or defenses, are not to be submitted to the Most Eminent Fathers for printing, unless the reporting judge has given permission for them to be printed.

IX. The case shall be considered concluded on the day that the Most Eminent Fathers are assembled in the full Auditorium.

X. The Procurator General of the Congregation and the reporting judge shall be present.

XI. The reporting judge will report to the Most Eminent Fathers on the entire state of the case, and the Procurator General of the Fiscal Office will stand for the Episcopal Court, and will explain his conclusions.

XII. After these things, the Most Eminent Fathers will pronounce judgment, either confirming, or rejecting, or even reforming the sentence of the Episcopal Court.

XIII. The sentence, together with all the acts of the case, is returned to the same Episcopal Court, so that it may be executed.

XIV. A review, or reconsideration, of the matter adjudged is not granted, unless the power to grant it has been conferred by the Holy See, and there are very serious reasons for it, concerning which knowledge and judgment

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pertain to the full Congregation.

XV. Finally, Episcopal Courts should know that, by the most recent laws which have been promulgated for the investigation and punishment of crimes by the secular tribunals, nothing has been taken away from the canonical forms and rules, which they must therefore follow entirely, as these words of the Edict pertain.

[*Latin ed. p. 335*]

INSTRUCTION 335

XXXIX. XXXIX. After the appellation has been interposed, within ten days, the Curia, without delay, remits to the superior ecclesiastical authority, before which the appellation was made, all the original acts of the Cause, that is, the process, the restrictions, the defenses, and the sentence.

XL. XL. The superior ecclesiastical authority, having taken cognizance of the act of appellation, intimates to the appellant that, within the term of twenty days, he must appoint a Defender, who must be approved by the same superior authority.

XLI. XLI. If the aforementioned peremptory term expires without effect, it is considered that the appellant has renounced the benefit of the appellation, and this is declared by the superior authority.

XLII. XLII. When the appellation of the sentence of a diocesan Curia is brought before the Metropolitan, the Archbishop, for the cognizance and decision of the Cause, follows the method of procedure traced in this instruction.

5 November 1831 - Nothing shall be innovated, as far as ecclesiastical judgments are concerned, and also in the imposition of penalties, as is provided in the appendix of the same Edict; the Tribunals of mixed jurisdiction shall impose upon Clerics and ecclesiastical persons those penalties which the Ecclesiastical Tribunal would impose upon them according to the Canons and the Apostolic Constitutions.

J. A. CARD. SAXA.

PRAEFECTUS.

I. Patriarch of Constantinople

Secr.

[*Latin ed. p. 336*]

INSTRUCTION 336

XLIII. XLIII. If it should happen that a Clergyman, contrary to the priv-

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ilege of the forum, is subjected, notwithstanding the forum's privilege, to the procedure, trial, and judgment of the secular power for common crimes, the Ordinary, in such a case, takes summary information concerning the criminal act, and examines whether, according to the sacred canons, it can give rise to infamy, irregularity, or another ecclesiastical sanction.

§ 1. While the judgment is pending, or the accused is detained, it is prudent that the Ordinary limit himself to provisional measures.

§ 2. However, once the judgment is concluded, and the accused is released, the Curia, according to the results of the information obtained as above, proceeds analogously to what is prescribed in the present instruction.

XLIV. XLIV. In doubtful cases, and in the various practical difficulties in which the Ordinaries may find themselves, they consult this Sacred Congregation, in order to avoid disputes and nullities.

From the Most Holy Days, June 11, 1880.

The Most Holy Lord, our Pope Leo XIII, having heard the report concerning this Instruction from the undersigned Secretary of the Sacred Congregation of Bishops and Regulars, deigned to approve and confirm it for all.

Rome, on the day and in the year above mentioned.

L. CARD. FERRIÊRI, PREFECT.

Agnozsi Secretarius.

[*Latin ed. p. 337*]

337 LETTERS from His Holiness Pope Leo XIII, in which Isidore-Joseph De Roussaux is named Bishop of Tournay. TO THE VENERABLE BROTHER ISIDORE-JOSEPH DE ROUSSAUX, BISHOP OF EUMENIDES, IN THE TERRITORIES OF THE INFIDELS, AND APOSTOLIC ADMINISTRATOR OF THE CHURCH OF TOURNAY, ETC. LEO PP. XIII. Venerable Brother, Greetings and Apostolic Benediction. The office of the apostolate, though deserving of unequal merits, has been entrusted to Us by God from on high, by which, according to Divine disposition, We preside over the governance of all churches, and We strive, with the help of the Lord, to carry out this office diligently, with a concerned heart, so that, when matters concerning the governance of these same churches are brought up, We may endeavor to appoint such pastors to them as will know how to care for the people entrusted to their care, not only by instructing them in the word of truth, but also by edifying them by the example of good works, and who will be willing and able, with the help of the Lord, to govern and administer the churches entrusted to them in a state of peace and tranquility. Indeed, We have reserved the provision of all churches,

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both those now vacant and those that will be vacant in the future, for Our own ordination and disposition, decreeing that from that time on, anything that may happen to be attempted concerning these matters by anyone, knowingly or unknowingly, with any authority, shall be null and void. Moreover, by Our Apostolic Letters, dated the third of the Ides of October of this very year, and signed by Our own hand (1), We declared and revoked absolutely and forever all jurisdiction, whether spiritual or temporal, in the Diocese of Tournay, belonging to Bishop Edmund Dumont, and We declared that the same Bishop had been deprived of the title of Bishop of the Church of Tournay, and that he had been released from any bond with the Church of Tournay. Now, since the Church of Tournay is left without a pastor, We, with paternal and concerned solicitude, intend to provide for the same Church, in which no one but We can intervene, in accordance with the aforementioned reservation and decree, and We address these words to You, Venerable Brother, to whom We have already entrusted the administration of the same Church of Tournay, both spiritually and temporally, (1) These letters were cited on page 289 of the *Acta*, volume XIII, section II.

[*Latin ed. p. 338*]

338 We direct the eyes of our mind. Therefore, We, Venerable Brother, releasing you from the bond by which you are held to the Church of Eumenia, by the fullness of Our Apostolic Authority, to the Episcopal Church of Tournay, We have received you, on account of your merits, and by Our Apostolic Authority, through the force of these Letters, We provide for you, and by these presents, We appoint you as Bishop and Pastor, fully entrusting to you the care, governance, and administration of that same Church, both in spiritual and temporal matters, confident in Him who gives grace and bestows gifts, that, under the guidance of the Lord, the aforementioned Church may be prosperously and happily governed and administered, and may receive increases in those same spiritual and temporal matters. Therefore, embracing with prompt devotion of spirit the yoke of the Lord placed upon your shoulders, you should strive to fulfill the aforementioned care, governance and administration diligently, faithfully, and prudently, so that the Church of Tournay may enjoy having been entrusted to a prudent governor and a fruitful administrator, and that you, besides the reward of eternal retribution, may also deserve Our blessing and the blessing of the Apostolic See in abundance. Notwithstanding, so that what is necessary may be done, without invalidating Our own and the regulations of the Apostolic Chancery regarding acquired rights, also, the blessed decrees of Our Predecessor Benedict XIV concerning the division of matters, and other Apostolic, and general or special universal, provincial, and synodal Constitutions and ordinances, nor also the statutes and customs of that same Church of Tournay, which are strengthened by oath,

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Apostolic confirmation, or any other means, nor anything else that may be contrary. Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the twelfth day of November, 1880, in the third year of Our Pontificate. T H. CARD. MERTEL. h. f. S.

LETTERS from His Holiness Leo XIII to the Reverend Canon Lebeurier of Orleans, General President of the Apostolic Association (1).

LEO PP. XIII.

Beloved Son, Greetings and Apostolic Blessing.

It is with great joy of mind, Beloved Son, that We have learned from your conversation and letters about the work of recalling secular clergy to the life [of the religious order].

(1) The Apostolic Association is a sodality of priests belonging to various dioceses, who contribute their prayers and good works in common and participate in the privileges granted to this institution by the Apostolic See.

[*Latin ed. p. 339*]

LETTER 339. It is possible that this common endeavor, however arduous, has progressed so successfully that it has already spread to thirty dioceses of Gaul and all of Belgium, as attested by the Bishops. At these times, so harmful to the Church and so dangerous to souls, Divine Providence seems to have preserved the restoration of this salutary Institute, which had been erased by the passage of time and the vicissitudes of centuries, and which, although re-established and propagated later by the Venerable Bartholomew Holzhäuser, had again been extinguished by the upheavals of our past and present times. And indeed: whether one prefers a less solid and harmonious form of institution, which these disturbances have made susceptible to division and frivolity, and thus a different way of feeling, judging, and teaching; or whether one considers the arts by which the enemies of the Church, intent on dismembering the Catholic unity, strive to corrupt the clergy, to separate them, and to turn them away from their own pastors and from this Apostolic See; it seems clearly to be the work of a higher purpose that this ancient institute, so perfectly suited to the necessity of the times, should be called back to life to defend and strengthen the unity that has been achieved. For it offers a uniform way of life to all; exercises that foster piety and protect virtue against the dangers of the world; accounts of their own actions freely given to their superiors, and subject to periodic review; monthly meetings for spiritual discussions on matters relating to the ministry, which may bring together minds not entirely in agreement; a common goal to which all forces are united under the guidance of the Bishop; and a study that arises from this very custom and friendship, of helping each other: all these things will not only unite all those who enjoy this common fellowship; but will also bind other members,

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drawn to it from their own duties, with such a spiritual bond that no one will feel separated from the family, abandoned by the moderator, or lacking the support of brothers and the counsel of the *privatum*. Therefore, if our predecessors have commended this most useful Institute with the highest praise; we, too, do so most readily, especially in these difficult times which seem to demand its help; indeed, we urge all secular priests to join this most salutary association, so that they may better promote their own well-being and that of the religious life. May they be moved by the clear sign of Divine Providence, which has now revived this Institute to aid in the work of the Church. May they be moved by the heavenly blessings, by which the growth of this work has been miraculously advanced in the midst of the most serious difficulties. May they be moved by the applause of the Bishops, by the constant praises of this Apostolic See, by the fruits already evident; which the very propagation of this association promises to provide in ever greater abundance. These are the highest praises that we ourselves offer.

[*Latin ed. p. 340*]

340 LETTERS concerning the sanctification of the clergy and the most holy glory of Our Religion; while, as a pledge of heavenly favor and of Our paternal benevolence, We impart the Apostolic Blessing to you, beloved son, to the entire association which you lead, and to all those who will give their name to it. Given in Rome, at St. Peter's, on the 31st of May, 1880, in the third year of Our Pontificate. LEO XIII, POPE.

FROM THE HOLY CONGREGATION OF THE COUNCIL FACULTY FOR REPEATING MASSES.

December 20, 1879.

The Archbishop of Mexico, in a report transmitted to the Holy Congregation of the Council concerning the state of the Church in Mexico, states the following regarding the custom of celebrating multiple Masses on the same day: "Besides the ample faculties with which this Archdiocese enjoys, through the benevolence of the Holy See, and which are communicable to other Ordinaries of the Republic, the relator earnestly requests that the Holy See grant him the faculty to allow, and to the extent that it may not be possible or expedient, that the Holy See may overlook, that certain and designated priests, appointed by the Ordinary, may celebrate three Masses on Sundays and other feast days by order."

The reasons presented are as follows: 1. The extreme poverty in which the people, especially the indigenous population, live; and because of this, they are often unable to give anything to the priest celebrating Mass on a feast day, other than the usual alms, due to the distance and hardships.

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SUMMARY OF THE MATTER.

[*Latin ed. p. 341*]

FACULTY OF MISSIONS, ARTICLE 341, PARAGRAPH 2. The lack of ecclesiastics, whose number does not maintain a proper proportion with the number of people; thus, many Masses could be celebrated for the benefit of the people, without granting some priests the power to celebrate three Masses on festive days.

3. It would be very harmful if the faithful living outside cities and towns, and scattered in villages, were to abstain from attending Mass, since the hearing of Mass is the only practice, or religious act, that is offered to or performed by them; and other faithful, accustomed to religious practices, deprived of the Mass, could easily engage in idolatrous acts, since they are not yet entirely free from the stain of superstition. Furthermore, it is only on the occasion of Mass that people of dark complexion, who are truly indigenous, gather together with other people, and mutual charity is renewed among them; a thing that should not be scorned in these times, when the war of races is raging.

4. Finally, the income that the parish priests and their vicars receive on these occasions, from these Masses, contributes greatly to their honest sustenance.

Therefore, the Holy See, with fervent prayers, implores that, after mature deliberation, it may deign to grant its approval to this request, not only because there is a shortage of priests, but also because the people have multiplied, and especially because the wickedness and irreligion of the most wicked men daily undermine and corrupt the morals of all, and especially of the Indians.

DISCUSSION OF THE OBJECTIONS.

WHAT IS OBJECTED TO THE PETITION. In the early times of the Church, the small number of priests, in proportion to the number of the faithful, required that the same priest celebrate multiple Masses on the same day. Card. Bona, *De Rebus Liturgicis*, Book 4, Chapter 48, § 5 and following; Benedict XIV, *De Synodo Diocesana*, Book 5, Chapter 8, § 8. However, when this custom, which had its origin in the small number of ministers and the ancient piety of that age, began to increase and spread widely, and with the increase in the number of priests, it was corrupted and turned into a source of shameful avarice and profit, it became necessary to regulate it. Hence...

[*Latin ed. p. 342*]

342 Concerning the FACULTY OF CELEBRATING MULTIPLE MASSES, it is known that the Council of Salegunstad decreed in the 11th century

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that no priest should presume to celebrate more than three Masses in a single day. Thomas, *De vet. et nov. Eccles. discip.*, part 1, book 3, chapter 72, section 3. Subsequently, due to the abuse that arose, several Popes declared that, in particular cases, each priest should celebrate only one Mass. Finally, Innocent III, in the chapter *Consuluisti de celebr. Miss*, solemnly defined that "Except on the feast of the Nativity of the Lord, unless necessity dictates otherwise, it suffices for the priest to celebrate only one Mass in a day." Having briefly explained these matters concerning the ancient and present practice of the Church regarding the repetition of Masses, it does not seem that the petitioner's request should be granted. And indeed, after careful consideration of the reasons presented by the Bishop, it appears that the reason for granting such a faculty is derived from the poverty of the faithful, who are in such dire straits that they are unable to provide the customary stipend to the priest celebrating the Mass. From this, it seems to follow that if the faithful were not so impoverished, such a repetition of Masses would not be necessary. However, the poverty of the faithful does not serve as a valid reason for granting this faculty, since the Archbishop is in a position to provide for the stipends for the Masses from pious offerings and other goods of the Church, thereby averting the evils that are lamented. It is true that the scarcity of priests is also cited as a reason, which perhaps seems to be a sufficient reason for granting the indulgence. But if one considers that these priests repeat the Mass to the extent that they receive income from the Masses, a stronger reason arises for denying the indulgence and suppressing the abuse. It is known that in the faculty of celebrating two Masses, which is granted by the Sacred Congregation, it is expressly stipulated that no alms should be received for the second Mass.

WHAT FAVORS THE PETITION. However, if the reasons presented by the Archbishop are considered, his request does not seem to be unworthy of consideration. For there is a small number of priests, which is constantly decreasing, and is quite insufficient for the care of the faithful. Hence, unless the requested faculty is granted, it will be quite impossible for the faithful to fulfill the ecclesiastical precept regarding the attendance of Mass.

[*Latin ed. p. 343*]

The [dispensations] for repeating Masses should be granted. Furthermore, as the Archbishop reports, those faithful who live outside of cities and towns, and who are very devoted to religious practices, could easily fall into idolatrous practices if they were unable to attend the celebration of Mass. The very opportunity to attend Mass brings about another benefit, namely that people of different complexions gather together in one group with others, and charity is fostered and increased among them. These reasons seem to warrant an exception to the general rule, as granted by Innocent III in his Constitution, and which Doctors, among whom is

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Benedict XIV, restore to the state in which the faithful would lack the Mass, unless it were celebrated repeatedly by the same priest. Moreover, the Sacred Congregation of the Council has not infrequently granted indulgences for the repetition of the Sacrifice, even on feast days, so that the pious desires of the faithful towards divine worship would not be frustrated: *Argentinen*, September 11, 1859; *Lingonen* and *Turonen*, August 24, 1818, as mentioned above (1). Therefore, there appears to be a stronger reason to permit the celebration of three Masses on feast days, in which the faithful are held back by the precept of attending Mass. It should not be considered an obstacle that priests who repeat Masses receive a salary: for this is not, in the least, given for the application of the second or third Mass, but solely for the work itself, which, as it has been established, was permitted by the Sacred Congregation of the Council in *Treviren*, *Eleemosynae Missarum*, March 28, 1861, among the preceding documents, in which the response was: "It can be permitted, at the prudent discretion of the Bishop, some remuneration, considering the labor and inconvenience, excluding any alms for the application of the Mass." With these considerations, the matter was submitted to the prudent judgment of the Fathers.

RESOLUTION. The Sacred Congregation of the Council, after deliberation, decided on December 20, 1879, to respond: "For a period of five years, with the understanding..."

THINGS TO NOTE: I. The canonical reasons by which the repetition of Mass can be permitted, in order to prevent it from being addressed in any other way by the Christian (1). You have such a question in Volume XII, page 232. Also, see Volume IX, page 230, Volume VI, pages 526 and 546.

[*Latin ed. p. 344*]

FACULTY OF REPEATING MASSES: 344,000 florins, which is the right and duty of those who must hear Mass on feast days.

I. The reasons mentioned above seem to justify the case for an exception to the general rule, as established by Innocent III, because if fewer Masses were celebrated, the faithful would be deprived of the Mass.

II. Regarding repeated Masses, it is undoubtedly the case that nothing can be received from those who repeat them, unless it is permitted by Apostolic authority; however, it is sometimes granted, either due to the labor involved in celebrating Mass or due to a serious inconvenience.

IV. In this matter, a small number of priests are subjected to great inconveniences, both due to travel and the passage of time, in order to provide spiritual nourishment to people who are separated from each other and to foster charity among them; therefore, it has been rightly granted that more Masses may be celebrated and that offerings and alms may be received, as a recompense for their labor.

EXECUTION OF THE TRANSACTION: On January 31, 1880, the Arch-

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bishop, refusing to grant the presentation of the priest Vincent G., presented by the patrons, to the vacant parish of the Holy Martyrs Stephen and Gregory in the city of N., and after an appeal to the Sacred Congregation of the Council, on September 4, 1875, the following was inquired:

I. Whether the presentation is legitimate and effective in this case.

II. Whether and from whom the grant should be given in this case.

The response was as follows:

Regarding I and II, after a preliminary examination, in accordance with the form of the Council of Trent, the grant belongs to the Archbishop.

SUMMARY OF THE FACTS:

In fact, after an experiment, and after the examiners judged Vincent to be unsuitable to govern the parish, he appealed to the Sacred Congregation of the Council, regarding the report of the Synodal examiners and the judgment of the Archbishop, while also requesting the grant to the vacant parish.

Having received the documents, after (1) Let the reader consult the origin of this case, as related in Volume IX, page 99, in order to understand how the conflict, fiercely contested by the prelate and the priest, has reached its present state.

[*Latin ed. p. 345*]

Having carefully considered the matter, and at the earnest request of the consultant, the question was discussed in the meetings on March 3, 1877, and the following doubt was raised by the parties involved regarding a prearranged agreement: Does it appear that there was a bad relationship between the Synodal Examiners and an unreasonable judgment by the Bishop, so that the priest G. should be appointed to the vacant parish in question? The answer was: It is postponed and will be written to the Archbishop according to the intention. The intention was that the Archbishop should send documents regarding the lack of suitability of the aforementioned priest, and concerning other qualities, apart from knowledge, based on the letters of March 28, 1876, which he had sent to the Sacred Congregation of the Council. The circumstances were such that the parties, in order to eliminate all controversy, sought to reach an agreement, which, after several discussions, was finally confirmed on June 11, 1878. Article three of this agreement reads as follows: The Archbishop grants to the priest G. the faculty, without any condition, to choose, without a new examination or formality, any vacant parish benefice of free collation outside the city of N., from this day forward. On July 1, 1878, the Apostolic See approved this agreement with the following words: Having considered, etc., for the purpose of approving and confirming the aforementioned agreement, at the discretion and conscience of the Archbishop, contrary to, etc. On the

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10th day of that month and year, after the death of her pastor, the parish church of Saint Mary Major in the place P. manifested to the Archiepiscopal Curia, through Vincent, her desire to choose, in accordance with article three of the agreement. However, the Archbishop, exercising his authority, stated that he could not grant the vacant parish, because it was reserved to the Holy See for a certain period (1). (1) According to common law, or according to Chapter 2, title 4, of the book of Decrees, in the sixth part, and Chapter 34 of the Decrees, in the sixth part, the collation of vacant parishes in the Roman Curia is reserved to the Holy Pontiff. A benefice is considered vacant in the Roman Curia when the holder dies where the Roman Curia resides, or in Rome. However, according to Rule IX of the Chancery, the collation of vacant parishes outside the Roman Curia is also reserved to the same Pontiff for the months of January, February, April, May, June, August, October, and November. To Bishops who truly and personally reside there, the grace of substitution is granted, if they request it; for which they can confer benefices of free collation in the months of February, April, July, August, October, and November. Unless the Bishop accepts the substitution, he can confer the same benefices only in the four months of March, July, September, and December.

[*Latin ed. p. 346*]

346 REGARDING THE EXECUTION OF THE AGREEMENT, and therefore, the necessity of its concurrence. Therefore, Vincent G. affixed his signature, and insisted before the Sacred Congregation that it should invoke the Archbishop's jurisdiction to effect the presentation and commendation to the Holy See, for the obtaining of said parish; or to revoke all jurisdiction, so that the concord might be annulled. For, according to article 5, the petitioner could anticipate the collation of the parish of the Holy Martyrs, erected in the city of N., and resume the cause. The Archbishop, when asked in the usual manner, responded: 1. That he had undertaken in the agreement to confer upon the aforementioned priest any benefices, the collation of which belonged to himself and not to the Pope, such as the parish in question, which became vacant during the reserved months; 2. That the Supreme Pontiff, by approving the agreement, had not undertaken any obligation jointly with the aforementioned priest, so that he himself could claim some right over it. He also stated that, among all the priests of his diocese, the priest G. was not only not the most worthy, but that he could also assert before God that he was not suitable to govern such a large and prominent parish, of the importance of which the parish of Saint Mary Major is. However, he concluded that the priest G. had no right to aspire to the aforementioned parish; but that he still retained the full right to aspire to a parish that might become vacant, and the free collation of which belonged to the Archbishop. He himself, he said, had no reason to be displeased with his fate. The Archbishop, considering his honor, had

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made him a Canon, etc., and his financial benefits were secure, for, after deducting taxes and without any encumbrance, he had secured for himself an annual income of 1,230 livres. The defender of this dispute divided his argument into five points. In the first point, he maintained that the case of the vacancy of the parish in July 1879 should be considered as existing from the date of the beginning of the agreement; and this, according to the common law.

[*Latin ed. p. 347*]

EXECUTIONE TRANSACTIONIS 347. In the third article of the agreement, it is clearly stated that a stipulation was made, between the client and the Archbishop, to take effect on an uncertain day, which would constitute the condition. It is stipulated that every condition shall have force, and shall be considered as if it had been purely and simply agreed upon from the beginning, with all time spent in suspension and expectation being disregarded by the ministry of the law. Thus, Gaius in L. 11 ff. 'De Pignore §. 1 - there - « For when a condition has arisen, it is considered as if it had been made without condition at the time when the stipulation was made. L. 26 ff. 'De Condit, Instit.' and I. 8 ff. 'De Pericul. et commod. rei vindicatae' concur. Therefore, since the parish of Saint Mary Major is neither a patronage nor an elective parish, but one of free collation, and since, by the very law itself, any vacancy would have been retroactively applied to the date of the agreement, namely June, in which the Archbishop was granted the power to confer benefices, it follows that the parish should be conferred upon the priest G. It cannot be said that the case of a vacancy cannot be retroactively applied, by the ministry of the law, from a reserved month to a non-reserved month, to the detriment of the rights of the Holy See. For since the Apostolic See has approved and confirmed the agreement between the parties, it could not fail to recognize and confirm all the legal effects arising from the confirmed agreement, and especially that, in the event of a vacancy occurring in reserved months, the case should be retroactively applied to the date of the original agreement. However, the matter is further emphasized in the second chapter under the heading of parishes of free collation, which also includes vacant parishes within eight months of being reserved for the Holy See. Indeed, the Supreme Pontiff, possessing the supreme power over the entire Church, is the ordinary collator of all benefices, and the collators of benefices are only authorized by his authority. Can. 20 quaest. S caus. 9, D. de Luca de benefc. discours. 12 num. 28, Devoti Instit. can. lib. 1 tit. 1 sect. 3 num. 30. Therefore, since the priest G. was granted the power, in the agreement, to choose any parish of free collation, and since the agreement itself was approved by the Supreme Pontiff, who is the universal collator of all benefices of free collation, and

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[*Latin ed. p. 348*]

348 Once the AGREEMENT has been finalized, it necessarily follows that the option to be exercised, concerning vacant parishes within eight months, reserved for the Apostolic See, is not valid. This is even more so because a promise has been given to grant parishes without examination or other formality, which pertains solely to the Supreme Pontiff: for, at any time that a parish became vacant, the Archbishop was not free to dispose of it, but was obligated to observe the laws of Trent. Consequently, by the very necessity of law, the agreement in Article Three must consider only the Supreme Pontiff, "as the collator of the parish and released from the law of Trent." Therefore, if the aforementioned article has been approved without exception by the Supreme Pontiff, adding a clause, whatever limitation it may contain, as the words in the confirmation of the agreement express, notwithstanding any contrary provisions, and if no mention is made of the months reserved, it must be concluded, without any doubt, that the consent of the Pontiff includes the vacant parish within any of the eight reserved months. For indeed, as knowledge, presence, and silence imply consent according to L. 1 of the Code, and L. 2 ff. concerning municipalities, and L. 12 ff. concerning betrothals, a fortiori, consent is given when a person declares that they approve and confirm the contract, not by explicitly stating their intention to preserve their own right. Therefore, having reached this point, the Advocate argues that, in the hypothetical case, the Archbishop is bound by an obligation to commend the parish to the Apostolic See, in order to obtain a nomination to the vacant parish. For it is a well-known principle of law that a promisor is also obligated to take care, on his part, that the agreement be fulfilled, according to what is stated in the texts in L. 52, 83, 87 ff. concerning significant words, L. 14 ff. § 2 concerning previous stipulations, and L. 9 ff. concerning promises and stipulations. He is certainly not released from this obligation if it is proven that his negligence or fault caused the agreed-upon agreement not to take effect. On the contrary, he is held liable; and (1) the Council of Trent, Session 24, Chapter 18, concerning reforms, speaking about the form in which provision must be made for vacant parishes, states: "After the established time has elapsed (for the announced competition), all those who have been described shall be examined by the Bishop, or if he is unable, by his general vicar, and by other examiners, not fewer than three...." Hence, without the permission of the Apostolic See, the Archbishop could not dispense with the examination.

[*Latin ed. p. 349*]

In the execution of a transaction, it is understood that one party has diligently fulfilled their obligations, unless they can prove that the fulfillment

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of the agreement depends on a third party, and that they have exercised all due diligence with respect to that third party; for it is generally understood, as Bartolus teaches in *Consilia* 28, Boer. *Decisiones* number 16, Fabrus in *Ad codicem, titulus De contractibus*, Bronch. *Assertiones* 40, and Schueff. *Consilia* 15, *Decisiones* 1, that such diligence has been promised. However, in the present case, the diligence that should have been exercised was with the Apostolic Datary, because it was not a futile effort, but rather very useful for the execution of the contract, since the Apostolic See often fulfills the wishes of Ordinaries and is accustomed to granting benefices recommended by them.

Furthermore, the Orator states that, not only did the priest G. receive the favor of the Archbishop, but the Archbishop also opposed a reservation and used all his power to prevent the priest from being assigned to the aforementioned parish; otherwise, it would have been pleasing to the people, as has been proven by numerous testimonies.

The Orator devotes the entire fourth section to demonstrating the suitability of the priest G. for the administration of the parish. He states that, in addition to the laudable testimonies of the Archbishops regarding his suitability for administering parishes, there is also the opinion of the Consultor of the Sacred Congregation, which confirms the same, as well as the favorable opinions of three theologians of the city, presented in a previous case. Finally, there is the confession of the party entering into the transaction, in which the Archbishop openly granted the priest G. the freedom to choose any parish benefice, for free collation, without any impediment, except for the vacancy of the benefice, without any condition and without any examination.

Finally, in the fifth section, he argues for equity, asserting that in this most extreme case, all circumstances concur to strongly suggest that the parish should be granted to his client, by the indulgence of the Supreme Pontiff, with the advice of the Sacred Congregation. Indeed, there is no reason to doubt his suitability for administering parishes, so much so that the Apostolic See itself has judged him worthy and suitable for administering parishes, confirming the transaction in which he was granted the freedom, without any examination, to choose any parish benefice.

The purpose is to prevent a dispute from arising in the future, and to ensure that the agreement initiated and confirmed by the Holy See does not become invalid due to a reservation.

[*Latin ed. p. 350*]

350. Such a transaction, executed in this manner, did not achieve its intended effect, especially since it concerns a presbyter, favorably regarded by the people. RIGHTS OF THE ARCHBISHOP. On the contrary, the defender of the Archbishop presents the facts entirely, so as to remove all hatred and prejudice from the matter; and he demonstrates that the Arch-

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bishop has taken every care to appoint suitable pastors to the care of souls. He anticipates the merits of the case by stating: 1. That the controversy arose from an injustice, because, when the parish of Saint Mary of [place name], in the month of July, was vacant and reserved for the Holy See, it was not within the power of the same [Archbishop] to bestow it; since it was not granted absolutely, but conditionally, for free collation, as stated in article S of the transaction. For, as the canonists define, "Collation is the act of a superior bestowing an ecclesiastical benefice": Passerin, *de elect.*, c. 7, n. 2. The Pope enjoys full jurisdiction, while other bishops enjoy semi-plenary jurisdiction. 2. That, since the fact is undisputed, regarding the parish being vacant in the month reserved for the Holy See, such a question is resolved by law according to Rule IX of the Apostolic Chancery, which has been widely discussed by the renowned authors Gonzalez and Rigantius; therefore, a series of documents is not required to resolve this question by law. 3. Finally, the question is now limited to the month reserved for the Holy See; but the aforementioned article 3 has full effect when the free collation of the Archbishop is due, that is, when it ceases, and the day arrives; and in the meantime, it does not prevent the Ordinary from complying with the customary law, which is entirely prescribed by the Bulls and the practice of the Archdiocese of [place name]. With these premises established, it is first shown that the Archbishop neither intended nor was able to interfere with benefices reserved for the Pope. Indeed, Rule 9 not only revokes any privileges granted to any person to dispose of benefices reserved, but it generally reserves all ecclesiastical benefices, with and without the care of souls, to its own disposition. Reservation, as Gonzalez states in the Glossary, 84, ad d. reg., is a provision of ecclesiastical benefices by the Pope, made for certain months, and it is of such a powerful nature that whatever it finds, it destroys and takes with it: Gomez, *in rec.*, annals, q. 23, n. 4; Menoch, *de recup. poss.*, tit. 16, n. 144. Given this, it is clear that...

[*Latin ed. p. 351*]

351. The Bishop, justly and rightfully, refused to obligate himself to a benefice, the collation of which pertains to the Supreme Pontiff; otherwise, it is well known that the benefices administered in the Archdiocesis N., which are vacant during reserved months, are conferred by the Supreme Pontiff, and not by the Archbishop. Furthermore, he adds that this could not have been apparent to the Archbishop, not only because the aforementioned benefice was reserved to the disposition of the Holy See by a clause, which was removed and rendered invalid by a decree, but also because those who are inferior collators are deprived of their use and benefit, if they in any way intrude into benefices reserved, or if they prevent the provisions and graces of the Holy See from having their due effect upon them, as Gonzalez explains extensively in the gloss, 54, concerning the text in *iri*, chapter 74, on the matter. For, the rights of others must not be observed

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by those who do not fear to violate the rights of others. And Rigantius, in the aforementioned commentary, Rule 54, number 27, holds that "By such abuse, the alternative is lost, by law itself, without any declaration by the Pope." Furthermore, the argument for the prohibition arises from Rule 15, where all indulgences and agreements are revoked, which are in force and approved by a pact and concord. As Rigantius states in the aforementioned commentary, Rule, number 27; speaking of agreements entered into between private individuals, he teaches that "just as these do not have the power to dispose of or contract in prejudice of Apostolic reservations, so also the Apostolic confirmation that follows cannot impart to them the force of the agreement made with the Holy See." Secondly, from the foregoing, he declares that the Supreme Pontiff, by the general law and the special clauses added to the aforementioned Rule, has only approved a private agreement between the parties, and has not himself undertaken any obligation with the presbyter G. regarding a special favor. Reiff. in the interpretation of Rule 11, states that the former law has been changed, as far as it is expressly stated in the latter. However, the Supreme Pontiff ratified the collation that pertained to the Archbishop by virtue of the alternative indulgence, but not the collation that fully belonged to him during the reserved month, which he does not mention, nor did those who negotiated make any mention of it. For, a general clause is not sufficient, in the presence of contrary provisions.

[*Latin ed. p. 352*]

352 DESPITE THE EXECUTION OF THE AGREEMENT, the authority of Ferrari v. Claus, number 47, prevails: "A clause, notwithstanding any exceptions, does not derogate from the rules of the Chancery, nor from general councils. Barbosa notes in clause 82, number 13, that a general clause 'Notwithstanding, etc.' is not sufficient where the Canon Law, or Civil Law, contains a derogatory clause, etc." Thirdly, the Advocate observes that, in any absurd hypothesis, after the petition of the Municipality and the clergy of that place, who requested that the parish be conferred by agreement, it would never have been permissible to grant this parish to the priest G., even though the collation belonged to the Ordinary. Finally, he notes that it is possible, not only for the sake of merit in knowledge, but also "for other circumstances of the case, that one person may be suitable and fit for one parish and not for another," which is confirmed by the authority of De Luca, *Discourses on the Parish Priest*, number 8. With the foregoing in mind, the question to be resolved was: Is the place suitable for the execution of article three of the agreement, concerning the parish of Saint Mary Major, in this case?

(1) RESOLUTION. After mature discussion, the Sacred Congregation, on January 31, 1881, decided to respond: Negatively, and with the following understanding: namely, considering the particular circumstances, a pe-

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tition should be made to the Most Holy [Father] for the collation of the parish of Saint Mary Major, in favor of the priest Vincent G., and the Advocate of the same priest should be suspended from his duties by the [Sacred] Congregation for three months.

(2) (1) Nothing can be inferred from this resolution; for the Sacred Congregation seems to have postponed the consideration of the reasons, derived from law, by both parties, and merely wished to cut short the matter, so that a dispute would not be prolonged indefinitely, to the scandal and detriment of souls. For while the Ordinary, with all his efforts and *industria*, seeks to remove the priest G. from the parochial benefits, this priest, abundantly proven in his own knowledge, and also possessing other qualities suitable for governing parishes, demands nothing more than the parochial benefice, which he finally obtained through the kindness of the Apostolic See.

(2) The penalty imposed on the defending Advocate was severe, because in his defense, he did not show sufficient respect towards the Archbishop, the opposing party; however, this is not certain from our report.

[*Latin ed. p. 353*]

353. DISPENSATION FROM IRREGULARITY. On March 20, 1880. Through a summary process, Francis Xavier, of a pious and religious family, of the Apostolic Vicariate of Geneva, having completed his philosophical studies, while engaged in theological studies, legitimately received the tonsure and the four minor orders. In the year 1872, when he was pursuing his fourth year of theological studies at the University of Oenipontana in Austria, he almost lost the use of his eyes, so that he had a rather general and hazy vision. Not broken in spirit by this misfortune, this pious young man, who ardently desired to dedicate himself to the service of the Church, neither ceased to attend public lectures at Catholic universities, nor did he privately avail himself of the work of others, in order to be instructed in theological disciplines. Therefore, in the year 1876, the Apostolic Vicar of Geneva, having obtained, by the oracle of a living voice, the authority from His Holiness Pope Pius IX, promoted Francis, despite this considerable defect, to the sacred orders of Subdiaconate and Diaconate, and from that time onward, he preached the word of God, as is fitting for a Deacon, in the public temples of his own country, and then in other dioceses, with the license of his Bishop. SUMMARY OF THE FACTS. Now residing in Rome, in order to perfect himself more and more in the study of the theological discipline, he presented a petition to the Most Holy [Father] so that he might be ordained to the sacred order of the Priesthood, along with a request for an example of a grace otherwise granted by the Holy See, to a certain Nicasio De Vaud, who had been blind from a young age, but with the assistance of another priest. SYNOPTIC DISCUSSION. By divine precept in the Old Testament, those with bodily

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infirmities, and especially the blind, were excluded from the altar service (Leviticus 21:18): "nor shall he come near to the altar, if he be blind."

[*Latin ed. p. 354*]

354 A dispensation from irregularity may be granted, even if one is afflicted with a cataract or has an opacity in the eye; this law, being ceremonial, was abrogated by the death of Christ, but has been reinstated by the Holy Fathers in substance, as can be seen from canon Illiteratos distinct. 46 and throughout the title of decrees, De corpore vitiatis ordinandis vel non, and more extensively in Pyringh on the same title. Reijfenstuel, book 5, title 37, number 80, and generally in Doct. The blind, however, are considered irregular even for the first tonsure, according to the text in chapter Hinc est dist. 49, chapter final, dist. 55, as held by Praeposit. in the aforementioned chapter final, 55 verse. I object to this. Fagnan, Caput cum Contingat. De aetate et qualit. etc., number 116. Pignatel, cons. 146, number 7, volume 8. Therefore, it is not doubtful that Xavier should be excluded from the Order of Presbyter, since he is irregular. Nor is there any hope of obtaining a dispensation from this irregularity; for, as testified by Benedict XIV in Instit. Eccl. 34, § 2, "The Holy See has never remitted this impediment to anyone; but those who, after receiving Holy Orders, become blind due to a disease, may do so only on the condition that they are not completely blind and that they do not recite the Mass by heart." Indeed, there are resolutions of the Sacred Congregation denying dispensation in similar cases, as in the case of Pamplona, March 8, 1733. More clear examples of denied grace are found in Naples, September 17, 1814, and Vercelli, July 28, 1860. Similarly, a response is found in Cologne, Dispensat. September 18, 1862, and more recently in Carcassonne, Dispensations ab Irregularitate, February 27, 1869. It cannot be argued that the example of a certain Robert of Scotland is valid, to whom, although blind from childhood, the faculty was granted, not only to ascend to the priesthood, but also to the episcopate, as held by Maiol. De Irregularit. book 4, chapter 20, and Barbos, de Offic. Episcopi, allegation 42, number 28: for Benedict XIV responds that "other writers, to whom greater credence should be given, say that Robert was not blind in the eyes, but was infirm."

WHAT IS FAVORABLE TO THE PETITION. However, it should be noted that in the present matter, we are not dealing with the initiation to the first tonsure or with the promotion to the sacred orders, about which the authorities and decisions mentioned above specifically speak, but rather with...

[*Latin ed. p. 355*]

DISPENSATION FROM IRREGULARITY 355: It is legitimately promoted to the order of the Diaconate, and, consequently, the rigor of the canons should be relaxed. Since he was promoted in this state through a

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dispensation, it seems that the petitioner may possess some right to obtain the requested dispensation. It is known that princely benefices must be fully interpreted according to Leg. 3 Cod. de constit. Princ., L. Quod vero ff. De leg. L. If ever Cod. de inoff. testam. Therefore, if Francis has been promoted to the Diaconate through a princely benefice, and since these orders are ordained to receive the priesthood, it would seem that he has already implicitly been dispensed, or, if not, that he is favorably disposed to easily obtain the requested dispensation in the future. Otherwise, it would be absurd that a princely benefice would be detrimental to a young man: since he would no longer be able to hold any ecclesiastical office, given that the sacred orders have already been received. With these things having been brought forth, the best qualities of the petitioner and the merits of his family towards the Catholic Church, as well as the scarcity of priests, with which the city of Geneva suffers, and the great good of souls that could be obtained if the requested grace were granted to the petitioner, can be added. However, the imminent danger, whether of the spilling of the consecrated chalice, or the removal of the host from the corporal, or the scattering of fragments, does not seem to present a significant difficulty, since he is not entirely without light and can celebrate with the assistance of another priest or deacon. Therefore, having noted these things on both sides, it was the judgment of the Most Eminent Fathers to determine whether the requested grace should be granted.

RESOLUTION: The Sacred Congregation, having considered the matter, responded on March 20, 1880: Considering the particular circumstances, for the grace to celebrate a votive Mass to the Blessed Virgin Mary, with the condition that another priest or deacon be present, with the understanding that this is done with the consent of the Most Holy.

[*Latin ed. p. 356*]

356 FROM THE DECREE OF THE CONGRESS OF BISHOPS AND REGULAR CANONS OF THE MINOR ORDERS, CONCERNING THE PROPERTY OF THE CHURCH OF SAINT ANTHONY, dated July 9, 1880. In the diocese, in recent times, a foundation had been established with its own funds, and until the year 1810, the Conventual Fathers possessed the Church and Monastery, under the title of Saint Anthony. At that time, when the terrible French sedition raged, the Fathers were forced to abandon their property, as decreed by the laws concerning their suppression. Then, the Parish Priest of Saint Mary of Graces, with the legitimate Prince exiled to Sicily, obtained permission from Joachim Murat to transfer the parish to the Church of Saint Anthony, which was larger and better equipped with sacred furnishings. The secular Parish Priest held the Church until the year 1841, at which time, with the approval of the Apostolic See and the legitimate King, it was granted to the Minorites; and the parish was returned to its own church. Even in our own time,

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when the suppression of religious orders had been decreed, even in Italy, by foolish men, emulating the French rebellion, the Parish Priest of Saint Mary of Graces again transferred the parish to the Church of Saint Anthony, without the objection of the Bishop. The Provincial Minister of the Observant Fathers, seeing that the Bishop seemed to favor the parish priest too much, appealed to the Apostolic See, seeking that the Church and Monastery be restored to the Minorites. SUMMARY OF THE FACTS. THE RIGHTS OF THE PARISH PRIEST. The Bishop, concerned about the parish priest, stated: "The Observants have improperly used the Monastery and the Church of Saint Anthony for some time; but they never possessed the right to possess them."

[*Latin ed. p. 357*]

OF THE MINOR ORDERS, ETC. 357, it has been said that they neglected to fulfill the condition regarding the stricter observance of the rules. For, by order of the King in the year 1841, the church of St. Anthony was granted to the Minor Observants, but under these conditions, which the Bishop of that time ratified: 1° That a religious family be established there with the rules of stricter observance. 2° That, as long as the community consists of six priests and an equal number of lay brothers and tertiaries, the parish may remain in the church of the monastery, which the religious may also use. 3° That, even when the parish is restored to the church of St. Mary of Graces, the parish priest shall have the faculty of celebrating, in the church of St. Anthony, for convenience, the feast of the Body of Christ, the feast of the patron saint, and the Feria V in the Lord's Supper, without prejudice to the functions of the religious. Furthermore, it is not true, said the Bishop, that the Conventual Fathers, with their own funds, founded the church and monastery of St. Anthony. For, on several occasions, the Municipality asserted and vindicated its own rights over both; and these rights were, in some way, confirmed when the legitimate Prince, in the year 1838, permitted the Municipality to grant the church and the monastery to the Observant Brothers. It is wrongly objected by the Minorites that the Ordinary at that time could not ensure the fulfillment of the condition regarding the stricter observance. This is contrary to the decree of the Council of Trent, Session 25, chapters 1 and 22, concerning religious orders and nuns, and to the decrees of the Supreme Pontiffs Clement VIII, Urban VIII, Innocent X, Alexander VII, and Innocent XII, who confirmed the decree of the Holy Congregation concerning regular discipline, dated July 18, 1695, § 9: "Moreover, so that the regular discipline, once established in already existing monasteries, may not be relaxed in those being founded, and that what is built up on one side may not be destroyed on the other," the Holy Congregation, with the approval of its Holiness, "decrees and ordains that no monasteries, colleges, houses, convents, or other places of religious men shall henceforth be founded, erected, or instituted in any

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way, unless under the express obligation of the exact common life, to be perpetually and inviolably observed by all the religious residing there, etc." And the Holy Congregation.

[*Latin ed. p. 358*]

3S8 OF THE MINOR ORDERS, ETC. In the year 1841, after careful consideration, and finding nothing lacking, the General Superior of the Observant Fathers granted certain privileges to the Minister General, "provided that all and each of the requirements prescribed concerning the establishment of a house, in the Apostolic Constitutions of the Order and in the decrees of the Holy Congregation, are observed in the aforementioned meeting of Saint Anthony." Therefore, the Bishop, mindful of the implementation of this condition, did not deem it fitting to attempt to exempt religious orders in any way. For even the preceding Archbishop had written to the Minister General of that same Order, stating that the people had not attained the spiritual good that was hoped for, and that he could no longer tolerate the neglect of the condition regarding the establishment of the house. It is not difficult to understand that the parish priest should have protested when, with the consent of the legitimate Prince, the Apostolic See, in the year 1841, the Church and the monastery were transferred to the Fathers who were not of the Observant Order. For the parish priest, although willingly submitting to the will of the King and the Pope, did not fail to point out that that Church, being of a larger size, would provide the greatest benefit to the spiritual welfare of the people entrusted to him. Therefore, the Observant Fathers were granted the house, subject to the aforementioned conditions. RIGHTS OF A RELIGIOUS ORDER. The Fathers state that no document supports the claim of the municipality regarding the Church and the monastery. Hence, when the religious orders were suppressed by Napoleon I, and the Conventual Fathers were expelled from that monastery, the municipality did not move a stone to defend its rights. Furthermore, in the year 1841, when the municipality, for the good of souls, requested religious from the Bishop and the King, the latter donated the Church and the monastery to the Observant Fathers, and in this matter, the municipality acted only as an executor, as it were, according to the decree of the Holy Congregation of June 25, 1841. From that time on, when the Fathers accepted the Church and the monastery as a gift from the King, the permission was granted, and the operations of the municipality resulted in the Church and the monastery being transferred to those same Fathers. Indeed, even if, as a donor, which we do not concede, the municipality had granted the Church and the monastery to the Fathers, it would now lack all dominion over them, since it has given them.

[*Latin ed. p. 359*]

OF THE MINOR ORDERS, ETC. 359. It is not permissible to confuse

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the decrees of Trent, concerning the erection of monasteries, with that which the Pontifical Constitutions prescribe regarding the establishment of dependencies, of which only one or two are designated in each Province. Therefore, the Ordinary could demand that a new community be erected in accordance with the norms of Trent and the Apostolic Constitutions, but certainly not that it be established within the same dependency with stricter observances. And in truth, the Holy Congregation did not say a word about this matter, when, through the aforementioned decree, it granted that the church and community named after the Holy See and the King be exempted. Nevertheless, it is alleged that a dependency of this kind was established as of the year 1855; although, indeed, this does not impede the causes which are independent of the Fathers. Furthermore, it is alleged that the conditions imposed by the Ordinary of that time were fulfilled; while the third and fourth of these did not destroy the property rights of the Religious, but merely imposed a servitude in favor of the parish priest. And in truth, while the Holy See often grants permission for secular clergy to perform funerals and for Regular canons to enter churches with a raised cross, no one has ever considered that churches subjected to such servitudes should pass into the dominion of secular priests. Finally, attention is drawn to the small size of the church of Saint Mary of Graces, which can never grant the parish priest the right to claim ownership of the church of Saint Anthony. Such a claim infringes upon the right of property; a right which the Fathers request the Holy Congregation to confirm in favor of the Religious; which Congregation is called upon solely to resolve a matter of law. Finally, it seemed opportune to bring to the attention of the Eminences the points 8 and 9, along with their legal responses given by the Holy Penitentiary (1), concerning the relationship between the Regulars unjustly suppressed in Italy by an incompetent authority, and the local Ordinaries. With these and other considerations, two points were to be clarified (1). You will find these doubts and answers in Volume VII, pages 147 and 148.

[*Latin ed. p. 360*]

360 OF THE MINOR ORDERS, ETC. Doubts I. Whether and to whom pertains the Church of St. Anthony in this case. And to what extent does the affirmative favor the Brothers Minor Observant? II. Whether and how the Church of St. Anthony in this case should be restored to them. RESOLUTION. The Sacred Congregation of Bishops and Regulars, having considered the matter, on July 9, 1880, decided to respond as follows: To I. Affirmative, in favor of the Brothers of the Observant Order. To II. The presence of the Parish Priest in the Church of St. Anthony is to be tolerated, until the Brothers of the Observant Order can be restored to it. FROM WHICH THE FOLLOWING MAY BE GATHERED: I. The matter concerns a question of law to be clarified; thus, it was only necessary to consider whether the

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Parish Priest or the Fathers of the Observant Order had claimed a right of ownership over the monastery and the Church of St. Anthony. II. The origin of the Parish Priest's right appears to stem only from the fact of occupation, with the consent of an illegitimate authority; whereas, the right of the Brothers arises from a legitimate donation made to them by one who was duly empowered to make it, with the consent of the Apostolic See. III. Nevertheless, from the mere fact of occupation, without a valid title and in good faith, no right can be acquired, nor does prescription run, because it is not confirmed by the passage of time, which, from the beginning, is not legally valid. IV. Monasteries duly established are commonly entirely exempt from the authority of the Bishops; and the conditions imposed by the Bishops to invalidate the institution of monasteries cannot take effect, except those imposed by the Holy See, in the erection of such monasteries. V. It has been decided by the Holy Penitentiary that Ordinary local officials and Parish Priests cannot use churches or houses granted to them by usurpers, nor can they establish parishes in them or provide for them independently of the Superior Regular, [1] (1) See Vol. VII, canon law, page 147.

[*Latin ed. p. 361*]

361 FROM 8. DECREE OF THE CONGREGATION FOR RITES, PROMULGATED IN ROME, CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, FROM THE COLLEGE OF PRIESTS OF SAINT GALL, REGARDING THE QUESTION: "Whether a Commission for the introduction of the Cause should be appointed in this case and to this effect?"

The benevolent God, who at all times sends diligent workers to cultivate His vineyard, aroused His servant, John Andrew Parisi, in this venerable city in the past century, a man adorned with angelic virtues and conspicuous for his zeal for souls. Born in Rome in the year 1700, and enrolled among the Capuchins, known as the Toletans, at the church of Santa Maria Maggiore, he was raised to the dignity of the priesthood by the Most Holy Benedict XIII. Meanwhile, he gave his name to the presbyteral college of Saint Gall, in which he presented himself as an example of the most excellent works, especially in evangelizing the poor, as the pious institutions of that college attest. Regarding his outstanding innocence of conduct, and the fervent charity with which he taught the rudiments of the faith to children, and with which he led those who had strayed back to the path of Christian life, the blessed John Baptist De Rossi, who had been a companion of the Servant of God in the sacred ministry, gave a splendid testimony. But concerning him, who loved to remain unknown and to be considered as nothing, the Blessed One himself confessed that he could relate many more things, if he had been granted divine light to contemplate the height

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of such virtue.

[*Latin ed. p. 362*]

362 DECREE: Nor did the testimony of John the Baptist, concerning this most innocent young man, differ so much as to cause judgment among those who had been edified by his conversation and words. Therefore, not only did John Andrew acquire a great reputation for sanctity while still living, but after his death, miracles, as it was said, occurred through the intercession of God, his servant, and his reputation was enhanced. This fame of sanctity, as if transmitted from fathers to sons, and especially preserved among the priests of the Congregation of the Holy Gall, has remained intact to this very day. Consequently, the Most Reverend and Right Reverend Peter Villanova Castellacci, Patriarch of Antioch, appointed as the promoter of this cause, satisfied the most fervent desires of the priests of the Holy Gall, and diligently endeavored to bring about the establishment of a new Ordinary Inquiry concerning the sanctity of life, virtues, and miracles of this servant of God, since the previous inquiry, begun in the year 1841, had not yielded sufficient results. And so, after this second inquiry was properly completed, an indulgence was granted by the Most Holy Pope Pius IX, so that the question regarding the signing of the Commission for the introduction of the aforementioned cause of John Andrew of Paris, might be considered in the Ordinary Congregation of the Sacred Rites, without the intervention or vote of the Consultors, even though less than ten years had elapsed since the presentation of the Ordinary process in the records of the same Sacred Congregation, and even though the writings of the aforementioned servant of God had not yet been thoroughly investigated and examined. Therefore, the Most Reverend and Right Reverend Cardinal Miecislaus Ledochowski, Relator of this cause, at the request of the aforementioned Most Reverend Promoter, and considering the supporting letters of numerous Most Reverend and Right Reverend Cardinals of the Holy Roman Church, Most Reverend prelates, and other men of distinction, both ecclesiastical and civil, proposed the following question to be considered in the deliberations of the Ordinary Congregation of the Sacred Rites, held today in the Vatican: Namely, whether the Commission for the introduction of the cause should be signed in this case and for the purpose in question? Furthermore, the Most Reverend Fathers, entrusted with the preservation of the Sacred Rites, after carefully considering all matters, and after hearing the voice and writings of the Reverend Father D. Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond: Affirmative, or that the Commission should be signed, if it pleases the Most Holy [Pope]. June 12, 1880. Concerning all of which, the following was

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subsequently recorded by the undersigned Secretary.

[*Latin ed. p. 363*]

363 To the most holy Lord, our Pope Leo XIII, a faithful report was presented; His Holiness approved and confirmed the judgment of the Sacred Congregation; and with his own hand, he signed the Commission for the Introduction of the Cause of the venerable Servant of God, John Andrea Parisi, on the aforementioned day, the 24th of the same month and year. DECREE OF THE MOST REVEREND CARDINAL BARTOLINIUS, PREFECT OF THE SACRED CONGREGATION. *Locus* (Place), *gg* (signatures), *Sigilli* (Seals). Placidus Rolli, Secretary of the Sacred Congregation. § *Synopsis*. A SUMMARY OF THE LIFE OF THE SERVANT OF GOD. On the 21st of November of the year one thousand seven hundred and thirty, the day on which the memory of the Presentation of the Blessed Virgin Mary in the Temple is celebrated, the Servant of God was born. He was born in Rome, in this city, the principal city of the entire religion, and his parents were distinguished more by Christian piety than by wealth: Caesar Parisi and Mary Locatelli, who on the third day before the Kalends of December, had the infant baptized with the waters of regeneration in the illustrious Basilica of Saint Mary of Trastevere, and gave him the name John Andrea; so that he might be named after him who was the first among the followers of Christ to observe virginity, and so that the name would recall both the feast of the Blessed Virgin on which he was born, and the solemnity of that Apostle, whose vigil witnessed the salutary rebirth of the little boy. From the very beginning of his life, the most excellent education, imparted by his pious parents, brought forth abundant fruits of heavenly blessings. The Servant of God had three brothers and three sisters; of these, the women lived in the paternal home in the manner of nuns, preserving their virginal purity until death; while the eldest of the men was a companion to John Andrea in the priestly ministry; the third was a son of Saint Francis of stricter observance, and lived a penitential life within the religious enclosure; and the remaining one, having joined himself to a most pious woman as his wife, illuminated their conjugal home with the splendor of conjugal virtue. Indeed, the entire family was so filled with the fragrance of holiness, that they admirably suited the words of the Ecclesiastic: "These men are merciful, and their pieties have not failed; their seed shall remain for ever, and their inheritance shall be an inheritance of the Lord." (Cap. XLIV, v. 10, 11).

[*Latin ed. p. 364*]

364. The most excellent example of the works of the saints, and a model of an unblemished life, was our Andrew. From his very childhood, he displayed a love for piety and religion. Free from the frivolous pursuits to which the minds of boys are inclined, he devoted himself to attending

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church, offering prayers, and expressing the sweetest sentiments of filial affection before the altars of the Blessed Virgin Mary. The most pious father of Andrew, marveling at the boy's piety and the brilliance of his mind, had hoped to dedicate one of his sons to the fervent Order of the Brothers of St. Francis. He considered that John Andrew was best suited to fulfill this pious desire of his heart. Therefore, he arranged for him to be enrolled among the students in the schools of the Christian Brothers of St. Agatha, which were very popular at that time. However, although the Lord accepted the pious wish of the father, He permitted another of Andrew's brothers to enter the cloister of the Seraphic Order. He chose the unblemished young man to be a source of honor and an example to the clergy and the people of this city, through the brilliance of his virtues and the outstanding purity of his character. Hardly had the young man begun to acquire the rudiments of the Latin language, when it sadly happened that his father, who, even in his humble position (as custodian of the church of St. Cecilia), had been an encouragement to his children in Christian piety, was struck down by a fatal illness and completed his life, full of merit, with a precious death worthy of the just. Everyone can easily imagine how much grief this caused the entire family. The widow, especially, deprived of her possessions and burdened with a large number of children, pondered how she could cope with such misfortune. With a heavy heart, but compelled by the hardships of life, she considered it safer to advise her son, John Andrew, to abandon the course of human studies, which he seemed unable to pursue due to his poverty, and to devote himself to a shorter course of learning arithmetic, so that he might be admitted as soon as possible among the officials who dealt with accounts at the charitable institution of St. Piety's Mount. The obedient young man yielded to his mother's wishes, although with a sorrowful heart he perceived that the path to a religious vocation was being closed to him, and he went to the Clerics Regular of Vigia to study arithmetic. I will not say how zealously he surpassed his classmates in piety and modesty, how diligently he made progress in his studies, and how he provided an excellent example to the Catholic youth of that time, both in religious observance and in outstanding diligence.

[*Latin ed. p. 365*]

DECREE 365. Having repeatedly encountered the fervent priest, D. Vaselli, Canon of the Basilica in Rome, and Parochial Vicar, discoursing on the divine mysteries and the evangelical unction, and the Lord so disposing, he chose him as the guardian of his own immaculate conscience. The pious minister recognized that this concerned a young man whose soul was fragrant with the sweetest aroma of sanctity; hence, he became convinced that he was the most suitable person to be prepared for the service of the Church. He found the best opportunity to obtain this young

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man as his protégé, having already conceived of it in his mind; he urged the pious young man to consider dedicating himself to the service of the Church, provided that he had clearly perceived the signs of his divine vocation. Andrew accepted the pious priest's wishes, which were in harmony with his own desires, especially after obtaining the consent of his mother, who, in the midst of the family's hardships, showed the most profound obedience to the will of Heaven. He refused to attend public schools any longer, remembering that among some of his classmates, forgetting all shame, he had found those who, without blushing, uttered immodest words, to the scandal of the best young men and to the detriment of souls. Therefore, guided most holily by Canon Vaselli, not only in the rudiments of study, but also in the path of Christian perfection, the pious young man adorned his angelic soul with the flowers of heroic virtues. Who can recount the ecstasies in which he was transported, his fervent and prolonged prayers, his unquenchable zeal for heavenly contemplation? Who, without a deep inner emotion and sweet tears, could have witnessed the pious young man, before the domestic image of the B. Virgin Mary, whom he had adorned with burning candles and fragrant lilies, gathering his sisters and brothers, offering prayers, and meditating on heavenly things? With the fervor of his piety increasing, and having put on the clerical garments and received the minor orders, he dedicated himself entirely to works of charity. He frequently visited the church of St. Gall, finding delight in assisting the priests in their labors for the salvation of souls. He was diligent in teaching Christian doctrine to the poor, instructing children in the mysteries of the Catholic faith, and, following the pious custom of the religious union, inspiring the faithful with love for the B. Virgin Mary through suitable examples. With great zeal for study, he desired nothing more than to receive the higher orders and, finally, to be raised to the dignity of the priesthood. Although lacking good paternal guidance, he was not without a pious...

[*Latin ed. p. 366*]

366. A decree was issued by a wealthy family, at the advice of a spiritual director, establishing a patrimony for the service of God. Thus, the young man was able to fulfill the fervent vows he had made for so many years, and, through his reception into the sacred Orders, he dedicated his entire life as an unwearied evangelizer to the salvation of souls. How could one express in words the diligence and fervent prayer with which this most pure young man prepared himself to receive the priesthood? With what ardor of piety did he first approach the altar, and how did he receive the Lord, to whom he felt the most ardent flame of charity, in the sacred mysteries, with a heart overflowing with devotion? His face was so illuminated, his countenance shone with such heavenly beauty, that those present seemed to see not a man, but rather a being from the heavens, adorned with a most brilliant

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whiteness, representing the divine praises of the eternal Priest. And not only on that first occasion, but those who saw him daily approaching the altar seemed to behold an angelic countenance, moved by the extraordinary modesty and most exquisite piety of the Servant of God, and they burst into sweet tears. What can I say of the zeal with which, having been invested with the dignity of the priesthood, he pursued the sacred duties of the ministry for the remaining brief years of his life? With what ardent fervor did he teach Christian doctrine to the ignorant; did he lead sinners, with words redolent of Christian sweetness, from the mire of vices to the straight path of virtue; did he open the door of Christian religion to the just? What can I recount of the paternal affection and heavenly joy with which, surrounded by a crown of children, he endeavored to imbue their tender minds with the best precepts, and to draw the souls of those inexperienced in the world to the most delightful sweetness of divine love? What can I remember of the vehement concern he felt to provide for the poor, offering his help to those in need, even though he himself was poor, and to alleviate the suffering of the sick with the greatest compassion, preparing those approaching death for the delights of paradise? Thus, having accumulated such outstanding merits and shining with the name of sanctity, he passed through the brief course of his life, until, at the very height of his youth, already ripe for heaven, he exchanged this earthly exile for eternal blessedness. Concerning the heroic virtues of the Servant of God. The unanimous testimony of those who knew him affirms that the Servant of God exuded the fragrance of unimpaired virtues throughout his life.

[*Latin ed. p. 367*]

DECREE 367: This most excellent young man has fulfilled all his duties, and has given proof of outstanding devotion to religion. Hence, they testify to his unwavering faith and hope, his fervent charity towards God and his neighbor, and they recall the unblemished purity of his youth; his purity, which remained untainted until death; his outstanding humility; and his ardent zeal for Christian mortification. Furthermore, they attest that Andrew, with these most excellent merits, was received, not only through irrefutable documents preserved in the archives of Saint Gall, but also through the constant tradition of our ancestors; thus, the memory of the holiness with which the Servant of God shone forth has transcended the limits of the past generation and continues to remain intact in our own times.

A most outstanding document, which demonstrates that this young man, endowed with angelic virtues, emerged, arises from the testimony of the Blessed John Baptist de Rubeis. What could be said or conceived of greater praise for the virtues of this most pure young man than the words with which the Blessed de Rubeis begins his testimony, confessing that he had always venerated the Servant of God, as a young man living an angelic life, and so similar to Saint Aloysius Gonzaga, and had commended him

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with words of praise? Hence, he recounts that he scarcely knew the young man, but immediately perceived in him a constant dedication to prayer and an unremitting care for the preservation of purity. And not only that: the testimony contains outstanding accounts of his exceptional modesty, with which, while attending to divine duties, he served as an example to all; of his heroic charity, with which, burning with zeal for the salvation of souls, he endeavored to bring back to the bosom of the Christian Church the Jewish children received in the Saint Gall hospital, and to open to them the way to eternal salvation; and of his angelic purity, by which the young man's mouth, eyes, and countenance were marked.

This testimony is confirmed by the most serious documents of the most excellent contemporaries of Andrew, excerpts from which, taken from the procedural records, adorn the tables of the Summary: some of which extol his angelic piety of conduct, while others highlight his exceptional fervor of spirit, with which he offered acts of paternal charity to the sick received in the Saint Gall hospital.

Concerning the precious death and burial of the Servant of God. But since Andrew had led an angelic life, although adorned with the rosy bloom of youth, and was moreover adorned with excellent merits and virtues, he was taken among the shining choirs of heaven.

[*Latin ed. p. 368*]

36g. The decree was called the "crown of celestial gems." He was in his thirty-fourth year when the symptoms of a fatal consumption, which were slowly consuming his youthful life, became more severe. On May 12th, the blessed adolescent's feast day of Saint Pancratius the Martyr, the last day of the young man's life arrived. Thus, the soul of the blessed young priest was received among the heavenly choirs of the blessed, shining with the brilliant crown of outstanding virtues, and rejoiced in the beatitude of eternal celestial joys. At that time, it became clear how highly esteemed the sanctity of this humble and hidden young man was within this frequented city. Indeed, scarcely had the news of his precious death been spread, when everyone praised the unblemished purity of the young man, his illustrious merits, and his angelic piety. Hence, amidst a throng of people, and with the fearless praises of the priests resounding from all sides, his mortal remains were carried to the church of Saint Cecilia, as if in a triumphant procession, and were given a most splendid funeral. Concerning the fame of his sanctity, both in life and after death. The illustrious name of his unwavering sanctity grew after the precious death of the young man, so that the praises of his heroic virtues not only echoed through the streets of the vast city, but also in the neighboring provinces beyond the walls of Rome. Hence, there was a constant gathering of the faithful at his tomb, and an uninterrupted observance of private veneration for the fearless priest. To increase this renowned fame of sanctity, which arose from the outstanding

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deeds of the young man, much was contributed by the extraordinary miracles which, through the powerful intercession of his faithful servant, were wrought by the Divine Omnipotence, illuminating his memory in a most remarkable way throughout all time. Observations of the Promoter of the Faith. The pious group of priests, to whom the spiritual care of the poor at the church of Saint Gall is entrusted, also included the Most Reverend John Andrew Parisi, of whom we are speaking. He is said to have so illuminated the city, in which he had both his beginnings and his tomb, with his virtues, that the angelic young man, and another Aloysius Gonzaga, deserved to be called by his blessed companion, John Baptist de Rossi. Therefore, a year and six months after his death, judicial proceedings were begun by the Ordinary, based on the fame of his life and sanctity. However, these proceedings were interrupted after the examination of scarcely three witnesses, and were never resumed.

[*Latin ed. p. 369*]

DECREE 369, which was then brought to its conclusion. The reason for this is hidden; it is certainly regrettable that the process, even after it had begun, was lost, and that it required the most diligent efforts of the advocates to find it. In our time, since no witness could be expected, either by sight or by hearing from those who had seen him, who could testify to the virtues of the Servant of God, the Inquisition was entrusted with the task of investigating the matter; and I will speak briefly of the hope for its utility and good outcome. Ten witnesses were summoned by the advocate for the cause, and three more were added by virtue of their office. These witnesses were required to belong either to the same pious group to which the Servant of God was attached, or to be religious virgins, such as those of Saint Cecilia, in whose temple his body rests, and who had been present at his funeral and had known his parents. I do not, however, contend that these witnesses should be rejected as being suspected of excessive affection; but since, in this seat of judgment, inquiry is made into the fame of sanctity, which has been widely spread, it seems that they are not suitable as universal witnesses, since they belong to only two groups. Moreover, John Andrew did not keep himself hidden; he did not live a cloistered life; therefore, his habits, his manners, and his way of acting were known and observed by everyone. But I will speak of this later. In the meantime, in order not to appear to be indulging in conjecture, it is better to inquire more diligently as to what knowledge these witnesses possess. But the cause of all their knowledge and understanding is found in a certain biography, written by the confessor, the Most Reverend Father, or rather, by Father John Sotio, and published by the printers, or from the testimony of the Blessed John Baptist De Rossi. What, then, is to be said? Is this a legitimate, juridical, and sufficient method of proving the fame of virtues and sanctity? Are these truly and properly testimonies, which consist solely

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of the authority of a single private writer, and which refer only to this matter? Therefore, it must be entirely rejected as a means of providing proof through witnesses. Only the proof through documents remains; but this, being subsidiary, is admitted only in ancient cases, by a certain concession of the law, since otherwise, full and direct proof cannot be legally presented through manuscript documents or through historical accounts. (Benedict XIV, Lib. II, cap. 8, n. 5). However, in this case, these documents would bear the entire burden of proof. I have already touched upon the biography written by Vasellio and by Sotio, and upon the testimony of the Blessed John Baptist De Rossi. But other extrajudicial documents were also available to the biographer, as can be seen in the Acts, Vol. XIII, fol. OLII, 24.

[*Latin ed. p. 370*]

370. The DECREE and the documents upon which the Process itself largely rests. Consequently, the most diligent author of the Summaries was compelled to attach entire pages from these documents, using brief and often insignificant fragments of testimony. Regarding these documents, I shall mention a few things: First, it must be noted that no diligence whatsoever appears to have been employed, either by the Judge or by the Fiscal Prosecutor, such that the documents might be considered genuine, authentic, and in no way vitiated, as is required by law. There is no evidence of the expertise of ancient scribes, no recognition of handwriting, nor any comparison with other irrefutable documents. Indeed, the Commentary written by Vasellius appears so ill-formed, mutilated, and replete with errors, that it demonstrates a work abandoned by its author, still requiring much labor and industry to be polished and perfected. Furthermore, our law absolutely prohibits the introduction of extrajudicial testimonies, either for inquiry or for inclusion in a process; moreover, even when introduced, it does not grant them any probative force. (Benedict XIV, Lib. II, c. 49, n. 2, etc.) I shall add nothing about the life written by Sotio, since, as I have pointed out, it contains almost verbatim the testimonies of Vasellius and others. I know, according to the teaching of Benedict XIV, that even the life of a Servant of God can be the origin of a legitimate reputation, if it is ancient; but it must be noted that certain other factors must also concur in order that this opinion may be admitted; namely: that nothing is found in that life which is not in conformity with the facts presented and proven in the processes; also, that grave men must not only have approved the work, but must also have carefully compared it with the processes. The matter is confirmed by the example of the life of St. Aloysius Gonzaga, written by Father Virgilio Ceparo: For, before its publication, six theologians, three of whom belonged to other religious orders, compared it with the processes, and stated that it was taken from the witnesses examined in the very processes, and therefore was worthy

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of being a typical example. The judgments of these six theologians were presented to the Cardinals Jerome Bernerio, Bishop of Ascoli, of the Order of Preachers, Robert Cardinal Bellarmine, of the Society of Jesus, and Jerome Cardinal Pamphilio, then Vicar of the City, who were selected by the Supreme Pontiff Paul V for the examination of the work. The judgment of these three Cardinals was in agreement with the judgment of the theologians, and then the aforementioned Pope Paul V, in his Apostolic letters issued in the form of a Brief on the day of October 19, 1605, granted...

[*Latin ed. p. 371*]

DECREE 371 declares that it is fitting to publish to the edification and benefit of the Christian faithful the aforementioned work, etc. Indeed, with these things established, it would be very difficult to condemn the reputation of which witnesses would testify, by asserting that they had heard it said by a large part of the people, and that they had grounds for saying so, based on the life of the Servant of God, which had been brought to light by a grave man after numerous and solemn preliminary investigations. (Blessed XIV, Lib. II, cap. 1, n. 8). What time, I pray, in our case? When, with the proceedings scarcely begun, were the aforementioned documents presented? Where are the examinations of theologians? Where is the judgment and confirmation of the Cardinals of the Holy Roman Church, or of the Supreme Pontiff? Where are at least some similar things? Furthermore, this is the greatest difference; for in our case, as we have seen, it is not only a matter of providing support for the evidence, when suitable evidence already exists from the proceedings, but of the very substance of the judgment itself. Clearly, if there were valid, legitimate, and complete evidence of the virtues and sanctity of the aforementioned life, and derived from extrajudicial testimonies, what would be the point of the Ordinary process, the solemn apparatus of the examination, the questioning and attestation of thirteen witnesses? Would not these things appear entirely useless and futile? It would have been quite sufficient to present the life of our John Andrea written down, and the very testimony of the Blessed John De Rossi in the records. As for that testimony written by the Blessed John Baptist De Rossi, I consider it worthwhile to say a few things about that document individually. I omit the fact that the Blessed man wrote it in his youthful years, and without the bond of an oath. However, it was very important to know whether, in the subsequent process in which he was examined, he confirmed it, or perhaps corrected it. Furthermore, although certain things worthy of an ecclesiastical dignitary are mentioned in this document, it does not present such a complete and absolutely perfect image of the sanctity of the man, that the present judgment can be decided based on it. Especially, it says nothing about his reputation after his death, nor could it, since it was written in the year of his death. These are the things that exempt us from any further investigation. For what else do we

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seek regarding this reputation for sanctity, when in this case all suitable evidence is lacking? It is that reputation that is sought, which consists in the estimation and common opinion – of purity and integrity of life, and of virtues, not just in any way, but exercised through continuous acts, given the opportunity.

[*Latin ed. p. 372*]

372 DECREE concerning the common manner of acting of other virtuous men or women. (Benedict XIV, Book II, chapter 29, paragraph 7). — It is, of course, required that this opinion of sanctity be common, that is, that it prevail among virtuous and honest men, and among the majority of the people, so that it deserves the name of fame, rather than rumor (Benedict XIV, Book I). But if you hear our witnesses, not only was this estimation and opinion not common and universal, but it was so restricted in its limits that, as I have already stated, it scarcely existed among a few members of a single Pious Society, and among the nuns of St. Cecilia in the city. Besides these, only a certain family from the town of Rossi is remembered, which retains some memory in Paris, because it believes itself to be bound to him by a bond of kinship or affinity. Furthermore, to obtain the signature of the commission, it is not enough that this fame of sanctity has prevailed among the majority of the people, unless it has arisen from probable causes, that is, if it is based primarily on the exercise of heroic virtues. » But when questioned about these matters, our witnesses replied that they either did not know, or that they knew something from the testimony of the Most Reverend John de Rossi. Although it is difficult to find anything in the testimonies of the friends of the Society that could be considered objectionable, nevertheless, these testimonies reveal in him a certain slowness, timidity, and slowness of spirit. You see him constantly clinging to the side of his director, so devoted to certain minor exercises of piety that he would not bear to be separated from them. These traits reveal a young man who is indeed innocent and pious, but to an excessive degree, and far from the perfect virtue, and that firmness of spirit which makes men strong and prepares them for undertaking difficult tasks. I do not know whether this should be attributed to simplicity, or rather to his inherent self-regard, which once, when questioned before the same person, as to whether he would confess his sins to him, he replied, "No; because they could be more numerous, since the confessor is older." Otherwise, he said seriously: "If I wanted to be healed, it would be enough to pray to Jesus Christ; but I have no desire." These words reek of presumption and the vain pursuit of glory. According to the prescriptions in the Decrees of Urban VIII, it is necessary to inquire especially about the death of the Servant of God. In our case, however, we found that the Servant of God hastened his own death by the manner in which he acted. Indeed, he did not want to abstain from those labors which were harmful to him, but he also seems to have rejected

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medicines, disregarded the concerns of the doctors, and...

[*Latin ed. p. 373*]

DECREE 373: Concerning the counsel of parents: "I have never subjected my body to carnal medicine, but I have the Lord Jesus Christ." Furthermore, if this is to be understood as a complete rejection of medicine, then the Most Reverend Father would be considered to have committed a sin. For he sins who rejects medicine, unless he does so to mortify himself, provided there is no danger of death (cf. St. Alphonsus, *Opera Moralia*, Book I, Treatise I, Chapter II, Doubt II, n. 32). However, not only did he neglect the counsel of God's servants, but he was also so influenced by his own will that he decided to celebrate Mass on the very day that the physician had prescribed the medicine. These actions appear to be blameless, unless perhaps due to extreme simplicity.

Response to the observations of the Reverend Father, Promoter of the Faith. It is not to be overlooked, from the very beginning of this defense, that from the things which the Censor mentions at the threshold of his observations, it can be clearly deduced how outstanding a reputation for sanctity the fearless priest left behind; a reputation accumulated by excellent merits during the flourishing of his youth. Indeed, scarcely six years have passed since his death, and as the Censor himself states, judicial proceedings regarding his life and sanctity were initiated by the Ordinary with full authority. Surely, this has happened to few? Was it not a splendid testament to the veneration that this very city, a center of Catholic doctrine, distinguished by the piety of its clergy and people, paid to the memory of this unblemished young man? It is true that the proceedings of the Ordinary Inquisition, begun in ancient times, were interrupted after the examination of a third witness, and were lost in a most unfortunate event at a later time. But what then? Perhaps the unfortunate Actuary, Andreas Sellini, was not entirely external to this lamentable misfortune, for it was in his archive that the records of the initiated proceedings were kept, and he left behind a reputation for being a prodigal man. Indeed, there are those who remember him as being lost to jests, and who claim that he sold his own office along with all the documents. Furthermore, this unfortunate event may also be attributed to the unfortunate upheavals that occurred in the past century, leading up to the very beginning of our age, when all of Europe was devastated by such a flood of evils; when, in other words, all human and divine affairs were turned upside down by an impious effort.

[*Latin ed. p. 374*]

3 7 4 r DECREE: The most confident soul, St. Fidei Vindex, assured us that it was certain what had happened. Indeed, from the procedural acts, it is clear that the cause was interrupted only by a lack of necessary funds; however, even with more abundant resources, the diligence of the peti-

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tioners would scarcely have been able to bring it to a conclusion. For it is certain that no impediment, no hesitation, ever arose for those involved in the cause, but rather, the sanctity of the angelic young man only increased, so that, even amidst the difficulties of the times and civil disturbances, the most distinguished priests never failed in defending the rights of this cause. Therefore, after the unfortunate loss of the acts of the begun investigation, they did not lose heart, but, sparing no effort, they obtained that a new ordinary investigation be carried out. But the Censor adds that new procedural records were begun, when no witness, neither by sight nor by hearing from those who saw, could be expected; but how can we be blamed if we make use of subsidiary proofs, after the acts which were kept in the court have been lost, and it was necessary, after so long a time, to undertake another Ordinary Investigation? But in our case, the Censor reproaches both the Petitioner and the Judges for their conduct, who, among those summoned, either voluntarily or by duty, did not choose any men other than either priests belonging to the same pious group to which the Servant of God was attached; or the religious virgins of St. Cecilia, in whose temple his body rests and whose parents performed the rites of his burial. But it would have been a futile attempt to bring these most distinguished men to accuse him of suspicion. For, as the most experienced man knows, according to the norms of our Master and the accepted custom of this court, those who were connected to the Servant of God concerning whom the judgment is held, either by a bond of kinship or familiarity, are not prevented from testifying, but rather, they are admitted first in order. Indeed, these two conditions alone are required in witnesses: probity and knowledge. But who is more commendable among the witnesses for their gifts of knowledge than those who have shared charitable works with the Servant of God, or who possess the sacred remains of the same in their homes? And as for the nuns, what could be better than for those virgins to be witnesses of the traditions of past times, in whose church our young man gave the first examples of angelic piety, offered the first prayers, before his virgin years.

[*Latin ed. p. 375*]

DECREE 375: Did those first-born of a pure heart pour forth their delights? Did those virgins, under whose shadow the monastery stood, like a most excellent garden of heavenly virtues, the Servant of God, shining with the brightest light of sanctity, complete the unblemished course of their lives, and did this earthly exile transform him into the eternal joys of heavenly blessedness? Finally, did those virgins, who were best able to observe the remains of that innocent young man, so that when the faithful approached his venerated tomb, before the precious ashes, trusting in the midst of the anxieties of this world and the weaknesses of the body, they might offer fervent prayers, and that they might express the desires of their hearts through pleasing vows? Therefore, let the Censor of Sanctity cease

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to offer testimony that is less than suitable! Let the Priests belonging to the congregation of St. Gall remain. But I am astonished that St. Faith's Defender states: "And yet, Andreas did nothing in secret, he did not live in seclusion," and therefore, "his habits, his manners, and the way he acted were known and explored by all." Indeed, may I call this man an expert, and may I refute his argument? Does the Censor, most excellent, believe that the Priests belonging to the congregation of St. Gall, who, through the beneficence of this city, dedicate themselves to pious works, do something in secret, or do they live in seclusion, so that no servant of God can recognize their habits, their manners, and the way they act, and testify to the fame of their sanctity? Are not all the streets of the city known, and do they not, through the reasons of their own office, interact with all people of whatever group, condition, or sex; and do they not belong to many, and very famous, families of the city? Indeed, those same Priests, who, as long as they are engaged in the pious works of St. Gall, constitute one group, when those works are completed, form other and other gatherings, belong to other societies, and fulfill distinct duties. Therefore, I would not so readily concede to the Censor that, of all the examined witnesses, none, without exception, belong either to the monastic community of St. Cecilia, or to the Priests belonging to the pious congregation of St. Gall, when there are so many other witnesses present. But, on the contrary, the weight of the collected testimonies shifts to St. Faith's Defender, and what he states, that "almost no witnesses have testified," seems to be taken from some poetic flight of imagination. We are not those who say that the examined witnesses in this cause constitute complete and numerically absolute proof.

[*Latin ed. p. 376*]

376. DECREE concerning this matter. Indeed, we most readily acknowledge that, with regard to the unblemished life of the young man and the strength of his virtues, they could not have omitted many things, nor could they have recounted all the particular events. And nothing else could have been expected, if one considers that a considerable period of time separates the death of the Servant of God from the beginning of this inquiry by another Ordinary. Therefore, so that the force of the evidence might not lack in any way, we have added illustrious facts drawn from ancient documents, from ancient commentaries, and from the published life of the Servant of God. But even if the witnesses say that they have read the aforementioned documents, they do not present this as the sole source of knowledge; but, as follows from the first title of this summary, they especially appeal to tradition, which, having been transmitted from fathers to sons in a series of years without interruption, shines more brightly over so long a period of time. Therefore, the witnesses do not present the life written by John Sotio, nor the commonly known testimony of John Baptist De Rubeis, as the sole source of knowledge, but rather they appeal to the ancient tradition,

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and to that tradition which has been maintained without interruption by fathers to sons throughout the course of years. From the witnesses, the learned Censor proceeds to the documents. But with regard to the first [objection], we are not concerned, since these are the most ancient and of the greatest weight, except for one, which, however, constitutes the largest part of our proof. But the authority of these is not obtained from a single source, according to the Defender of the Faith; first, he observes that, since it is subsidiary, it is admitted only in ancient cases by a certain benign concession of the law, and that otherwise, a full and direct legal proof cannot be presented either through manuscript documents or through histories. But with regard to the first point, if this proof is admitted in ancient cases, then we are acting lawfully; nor is it clear in what way the Censor excludes it in this matter. For we are using the benign concession which the law grants to us, and which the Defender of the Faith cannot take away. Perhaps he will contend that this case is not an ancient one? But, according to the teaching of our Preceptor, this subsidiary proof is admitted in those cases in which, because of the antiquity of time, witnesses could not have been present. But how could witnesses have been present in our case, in which already half a century separates us from the precious death of the Servant of God? But with regard to the second point, the Censor, adhering to the authority of our Preceptor, adds that a full and direct legal proof cannot be presented either through manuscript documents or through histories. But Pope Benedict XIV, when he presents the documents...

[*Latin ed. p. 377*]

DECREE 377: Manuscript and historical evidence, which are direct proofs, do not suffice when dealing with causes that proceed through the ordinary process; in such cases, the burden of proof rests upon the witnesses; however, historical documents and extrajudicial testimonies have only the force of auxiliary evidence (1). But another is the mind of our Master, when the matter concerns an exceptional case, or causes proceeding through the ordinary process. Indeed, miracles alone cannot be demonstrated through historical documents; but concerning virtues or sanctity, nothing prevents historical accounts from being brought forward for complete proof. Thus, the words of our teacher: "The general rule is that miracles cannot be proven by mere histories and chronicles; however, virtues and martyrdom can be proven, according to the manner soon to be explained, by similar monuments, in causes proceeding through the ordinary process, or in cases in which, because of the antiquity of time, witnesses of the event cannot be produced, and there is need for subsidiary proof" (2). Furthermore, he adds: "In the aforementioned cases, there is room for subsidiary proof, and within the line of subsidiary proof, historical accounts and historical documents must have their place" (3). Regarding the difficulty raised by the Censor concerning the value

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of the life of the Servant of God published by the press, the Defender responded at length. Finally, he said: Thus, the doctrine of Benedict XIV can be summarized as follows: namely, that an ancient life, provided it is published by a proven author, is suitable for demonstrating the origin of a reputation for sanctity, but it is not sufficient for that purpose if the life is written by a recent author; except in the case in which, as in the life of St. Aloysius Gonzaga, this life is not only published by an author of exceptional integrity, but has been examined by the most serious men and, with the permission of the Supreme Pontiff, published for the edification of the faithful. Therefore, what the Censor quotes from Benedict XIV refers not to an ancient life, but to a recent one, and constitutes an exception, with the condition that, even this recent life, if published by a serious man, can properly be adduced to prove the origin of the reputation. Indeed, the author of this history is Father John Sotius, who, adorned with exceptional integrity of morals and outstanding virtues, devoted to tireless labors in the sacred ministry, is a man of the best piety (1).

(1) Benedict XIV, L. II, C. VIII.

(2) Ibid., loc. cit., § 1.

(3) Ibid., § 3.

[*Latin ed. p. 378*]

378. THE DECREE left behind a reputation. But this is not enough. Indeed, the most excellent Censor has justly lamented the lack of examination of the theologians. For he who first brings the work to light observes that this life has not appeared before the public until two outstanding religious men, possessing theological knowledge, have reviewed it, and that it has been preceded by the approval of ecclesiastical authority. In response to the testimony of the Blessed John of Rubeis, to which many witnesses adhere, the Censor replied: Since the Blessed John of Rubeis was born before the birth of John Andrea of Paris, and lived much longer after the death of the young priest, this testimony is a document of the Blessed [John], who speaks of another Servant of God, his contemporary in age, and of the tireless labors of both in the sacred ministry, and of heroic virtues. How much, then, is the dignity and trustworthiness of this testimony, when a saint testifies about a saint! Nevertheless, what the Blessed John of Rubeis has recorded in this document is not sufficient for the most excellent Censor, who follows. "Although certain things worthy of an ecclesiastical man are mentioned in this document," he says, "they do not present such a complete and universally accepted image of the man, that the present judgment can be absolved by it." But first, it must be noted that we have not brought this one document to judge the case. There are the testimonies of witnesses, there are the testimonies of men distinguished by their knowledge and piety, there are the commentaries written by the hand of Vasse, and finally, the life published by the most learned Sotion. Hence, if in the document of

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the Blessed John of Rubeis there is no mention of the reputation for sanctity after death, this is because the aforementioned monuments speak of it, and demonstrate that it has never been interrupted and has reached us to this day. Indeed, this very testimony of the Blessed John of Rubeis, written after the death of the Servant of God, is a most excellent argument in itself, that the pious young man, raised to the heavens, left behind an outstanding name for sanctity and virtue. But it is not the case that what is read in this document is of such a nature that it only mentions things worthy of an ecclesiastical man? It must be remembered that the Blessed John of Rubeis left behind a testimony, not a history; hence, it is futile for anyone to seek in it a so detailed and explicit description of the individual actions of his life, as is the case with biographers; and such a description is found in the commentaries of Vasse or in the life published by Sotion. He who gives a testimony about the deeds of a certain Servant of God, includes only certain things pertaining to his heroic virtues.

[*Latin ed. p. 379*]

DECREE 379: Yet, how extraordinary are those things which are read concerning the unblemished youth in this attestation! It suffices to turn one's eyes towards it, so that it may be evident how much, not only of ecclesiastical, but of the most worthy qualities of a saint, are described in this very concise account. Indeed, how could the blessed Ruys have adorned the virtues of this most upright young man with more polished words, if not by mentioning that he was a Servant of God, a young man of angelic purity, another St. Aloysius Gonzaga, and worthy of admiration, and other such qualities? From what we have discussed thus far, it is clear that the censure proposed by St. Vindex, which contends that an adequate proof cannot be established on this subject, is entirely devoid of foundation. For we know that the doctrine of our Preceptor requires that the fame be examined "which consists in the estimation and opinion of men" concerning "the purity and integrity of life" and concerning virtues, "not in any way, but through continuous actions exercised above the common manner of acting" of other upright men or women. Moreover, the praised Pontiff continues: "so that those who, in one or more places, are invoked with devotion by many in their needs, and are judged worthy by the judgment of many of the most serious men, are referred by the Apostolic See to the list of the Blessed or Saints" (1). With these things established, it suffices to examine the tables of the Summary, so that it may be evident how extraordinary is the fame of sanctity with which this pious young man shines, and which is contained not within narrow limits, but is widely evident. And furthermore, it is evident that the fame of sanctity of our young man, most brilliant even while he was still alive, has increased after his precious death, and that it flourishes not only among the pious group of priests who are devoted to St. Gall, but also among all the clergy. Hence, it is not surprising

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that the news of his precious death moved the entire city, that the hidden and needy young man was paid a splendid sum by a large gathering of people and clergy, and that all were of one voice that an angelic priest had died. The promoters of this splendid fame were those who had known the Servant of God, or who had heard of his outstanding virtues. And thus, the renowned fame of the angelic young man's sanctity, over the course of so many years, has not been interrupted by tradition from his most upright (1) Lib. II. Cap. XXXIX. §. 7.

[*Latin ed. p. 380*]

380. The decree states that the life in question extends to our time, encompassing a very long period. For even when men were already advanced in years and had given testimony, the youthful bloom still adorned the witnesses; indeed, the Blessed John Baptist de Rubeis, Sotius, Yasellius, and others, contemporaries of the Servant of God, committed to the memory of posterity the most outstanding of his virtues through exquisitely written accounts.

Furthermore, the Advocate inquires whether the title of sanctity originated from probable causes; that is, whether it is primarily founded upon the exercise of heroic virtues. To ascertain this, he notes that some witnesses, when questioned before the judges, overlooked this very point; others declared that they knew nothing relevant to the matter, which they testified. If some did explain certain facts relevant to the case, they merely referred to those found in the testimony of the Blessed John Baptist de Rubeis.

However, the same reasoning applies to the defense. We grant that some of the witnesses did not express any judgment on this matter. Was this the case with all of them? Was the principal theme of the demonstration entrusted to the witnesses? On the contrary, the very testimony of the Blessed John Baptist de Rubeis, to which, according to the Advocate, some of the witnesses refer, is not sufficient to demonstrate the legitimate origin of the reputation. This would completely overturn the Advocate's objection; nevertheless, many things testified by the witnesses, and many things emerging from other documents, clearly demonstrate that it was not the praise of knowledge or the excellence of any human virtue, but the splendor of unwavering sanctity that brought this pious young man such great renown among men. From this, it follows that his reputation shone brightly in this regard, which, as our legal expert requires, is the ultimate requirement: that the Servant of God be invoked by the faithful in their needs, and that he be considered worthy of being presented to the Apostolic See for inclusion in the list of the Blessed or Saints, by the judgment of many distinguished men.

Indeed, the excellent praises that the most distinguished men of every age attributed to the virtues of Andrew, the fervent desire with which the

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faithful sought his images and relics, as if they were precious treasures preserved in the houses of the saints, the frequency with which the people flocked to venerate the precious remains of the young man, the firm belief in the power of his intercession, and finally, the countless graces received by the faithful through the Servant of God as an intercessor – all these things refute the objection raised by the Promoter of the Faith, who presented the Servant of God as a young man of timid and slow intellect.

[*Latin ed. p. 381*]

DECREE 381: To him who, having been permanently attached to our Order, was indeed a man of sincere piety, but lacking in perfect virtue, and possessing that strength of spirit which makes men courageous and prepares them for undertaking arduous tasks, it was said: "It is enough to turn attentive eyes to the angelic life of this young man, so that it may be seen that he was endowed with outstanding talents of mind and character." Therefore, while he obeyed the commands and counsel of his superior, as if he were a most beloved son, and, as it were, devoid of his own will, subject to that of others, he gave an excellent example of that heroic humility, by which, as the blessed John Baptist de Rubeis recalls, he loved to be unknown and to be considered as nothing. But, having been initiated into the priesthood, what keenness of intellect did he display, joined to heroic charity, when he so abundantly fulfilled the duties of the ecclesiastical ministry entrusted to him? What shall I say of the sick and children who were in the hospital of Saint Gall? There is no doubt that the Servant of God never uttered a word that betrayed a flaw of presumption or a vain desire for glory. For even when he said that he did not wish to speak to them about his own sins with the confessor, who does not see how much these words suggest simplicity of spirit and innocence of manners? Who, I pray, could better recognize the humility of this pious young man than he who had been his spiritual father and the guardian of his unblemished purity? But in that he acted as a guide of conscience, as a proof of angelic simplicity, and transmitted this to the memory of posterity, did the Censor find a judgment inherent in this estimation? In the objection, which concerns the heroic hope of the Servant of God, the defender notes that the Censor added the word "seriously" when reporting the words of the pious young man, saying, "If I were to be healed." But whoever sees how much difference there is between the two expressions, for that adverb "seriously" completely removes any trace of presumption, if any was present. Therefore, what did the Servant of God express with these words, if not that he had confidence in obtaining healing, if he asked the Heavenly Father for this grace; yet, because of the immense charity with which he loved God, he preferred to die and be with Christ? Did the pious young man prefer to lose his life, lest even the slightest fault should stain him; and is this desire, so fragrant with heavenly love, so radiant with perfect sanctity, accused

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by the Censor as being tainted with the flaw of presumption? Finally, the Censor observes that the Servant of God, by his manner of acting, hastened his own death, unwilling to abstain from those labors which were...

[*Latin ed. p. 382*]

382 It was a detriment, to reject the medicines, and to despise the counsel of concerned doctors and parents! But concerning this, the glory of Catholic sanctity is that those who have undertaken the path of Christian perfection, with constant penances, may toughen their flesh, readily accept hardships, so that they may help the needs of their neighbors, and may not hesitate to seek even death itself for the good of souls. He who, moved by this exalted charity, undertakes a noble deed, despises life itself; and we, not only acquit him of any, even the slightest, fault, but rightly and deservedly venerate him as a hero of Catholic fortitude for all ages. Therefore, our Master rightly distinguishes between the reason for labors and penances that someone directly undertakes to hasten death and to bring about the ruin of his life, and that which the athletes of sanctity intend as another most noble end, either for himself, or for the sanctification of others. Those who follow the first deserve to be rebuked; but those who follow the latter, are commended with the glorious praises of heroic virtue. He asks, "Can anyone licitly embrace a harsh way of life for the sake of the supernatural faith, so that, as it were, he may serve God, and restrain concupiscence; even though he foresees that it will hasten his death?" He adds, "And in this, the opinion of theologians is true, that it can be done licitly and deservedly (1)." But the Censor adds: it seems that he rejected the medicines, and despised the counsel of concerned doctors and parents. The very word that the Defender of the Faith used, clearly shows how great is the weakness of the censure. For if we examine the facts, we see that the Servant of God exhibited the greatest obedience to the prescriptions of the doctors, he listened in silence to everything, and made no opposition. But when he was told that he would have to abstain from reciting the Divine Office; then he spoke those words which reveal the fragrance of his love. For it was sweeter to him to receive the Lord, this heavenly medicine, into his heart; than to use the prescribed method of medicine with so much detriment to his soul. Who does not see how exceptional charity these words express? Hence, according to the teaching of St. Alphonsus, as in this passage, (1) Lib. III. Cap. XXIX. n. 6.

[*Latin ed. p. 383*]

DECREE 383, chapter read: When the danger of death has passed (and at that time, the Servant of God requested the house of his predecessor, having a moderator of conscience present), he does not sin who refuses medicine in order to mortify himself; what sublime act of virtue is contained in that adolescent, who prefers to be deprived of a medicinal remedy

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that heals, rather than to lack the sweetest nourishment of the Bread of Heaven?

FROM: CONGREGATION OF THE INDEX. DECREE. Tuesday, February 14, 1881. The Most Eminent and Reverend Congregation of Cardinals of the Holy Roman Church, by order of the Most Holy Pope Leo XIII and the Holy Apostolic See, which presides over the Index of books of pernicious doctrine, and over their condemnation, suppression, purification, and permission throughout the Christian Republic, having convened in the Vatican Apostolic Palace on February 14, 1881, condemned and condemns, prohibits and prohibits, and orders that the following works be referred to the Index of Prohibited Books, or are otherwise condemned and prohibited therein:

EAMIANI, TERENZIO. *Confessioni di un Metafisico*. Vol. 2. Florence, Barbèra, editor, 1865.

Le Meditazioni Cartesiane rinnovate nel secolo XIX. Vol. 1. Florence, Successori le Monnier, 1869.

Compendio e Sintesi della propria Filosofìa, ossia Nuovi Prolegomeni ad ogni presente e futura Metafìsica. Book One. Royal Printing Press of Turin, G. B. Paravia and Company, 1876.

TIBERGHIEN, G. Professor at the Free University of Brussels. *Enseignement et Philosophie. Mission de la Philosophie à notre époque. Doctrine de Krause. Le Positivisme et la Méthode d'observation. La Théologie et l'origine du Langage etc.* Brussels, 1873.

Psychologie Élémentaire. La Science de l'âme dans les limites de l'observation. Brussels, 1879.

[*Latin ed. p. 384*]

DECREE 384 L E BOTJLENGER-VAUQUELIN. End of the Modern Religious Crisis, or the Catholic-Roman Church Adapted to the Needs of Virile Souls and to Those of Souls-Children or Minors. 2 volumes. Vichy, 1879. *La Grenesi della Chiesa* by G-eremia Fiore. Naples, Perrotti Printing Establishment, 1879. Decree of the Most Holy Office, February 9, 1881. Therefore, no one, of whatever rank and condition, may dare to publish, or, having published, to read or retain the aforementioned works, in any place, and in any language; but he shall be obliged to deliver them to the Ordinary of the place, or to Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to the MOST HOLY POPE LEO XIII by me, the undersigned, S.I.C., from the Secret Archives, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, on February 18, 1881. F. R. THOMASM, Cardinal MARTINELLI, Prefect. Fr. Hieronymus Pius Saccheri, Order of Preachers, Sacred Congregation of the Secret Archives, in the place of the seals. On February 22, 1881, I, the undersigned,

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Cursor, testify that the aforementioned decree was affixed and published in the City. De- Vincentius Benaglia, Apostolic Cursor.

[*Latin ed. p. 385*]

385 By the divine providence of our most holy Lord Leo XIII, Pope, these Apostolic Letters, by which an extraordinary Jubilee is proclaimed, to the Venerable Brothers, Patriarchs, Primates, Archbishops, and Bishops who are in peace and communion with the Apostolic See, and to all our beloved sons, the faithful of Christ: Greetings and Apostolic Benediction. LEO XIII, Pope. Venerable Brothers, and beloved sons, the Church of Jesus Christ, which offers the human race the greatest benefit of salvation and security, is so severely tested in this time of calamity, that it is daily exposed to new storms, truly comparable to that little boat on the Sea of Galilee, which, while carrying Christ the Lord and His disciples, was shaken by the greatest tempests and waves. Indeed, those who bear the name of Catholic now increase in number, in strength, and in the audacity of their schemes; and they do not merely suffice to openly reject heavenly doctrines, but with all their might and force, they strive to either completely remove the Church from civil society, or at least to prevent it from accomplishing anything in the public life of the people. Consequently, it happens that, in fulfilling the function which it received from its Author, divinely, it feels itself entangled and hindered by great difficulties from all sides. The most bitter fruits of this nefarious conspiracy redound most heavily upon the Roman Pontiff, to whom, with his legitimate rights diminished and with many obstacles placed in the way of the exercise of his most important duties, a semblance of royal majesty is, as it were, left behind. Therefore, We, by the counsel of divine providence, in this sacred power...

[*Latin ed. p. 386*]

386 APOSTOLIC LETTERS. Situated as We are, upholding the dignity of the Church throughout the world, and administering this district, We have long felt, and have often said, how grievous and calamitous is the condition of things in this Our city. We do not wish to recount the particulars; yet, it is manifest to all what has been happening in this Our city for many years. — For here, in the very center of the Catholic faith, religion is insulted, the dignity of the Apostolic See is injured, and the pontifical majesty is subjected to the insults of profligate men. — There are many things taken away from Our authority, which Our predecessors piously and generously instituted, and which they transmitted to their successors to be inviolably preserved; and it is not without reason that the rights of the sacred institution are violated, to the detriment of the Christian name, which has deserved the highest praise not only for religion, but also for the benefit of the nations, and which no power, however great, has ever been able to suppress. — Many temples of the Catholic rite have been closed

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or profaned; heretical rites have been multiplied; and the perversion of doctrines is spread, both in writing and in action, with impunity. — Those who have attained power often strive to enact laws that are injurious to the Church and to the Catholic name; and this, before Our very eyes, while those who are entrusted with the care of all things, by the very command of God, ought to be vigilant to ensure the safety of the Christian cause and the preservation of the rights of the Church. — Moreover, with regard to the power of teaching vested in the Roman Pontiff, they exclude Our authority, even from the very instruction of youth; and if it is permitted to Us, which is not forbidden to any private individual, to open schools for the instruction of young people at Our own expense, even these are invaded by the laws of the civil authorities. — We are deeply moved by this sad spectacle, and all the more so because the means of helping, which We most desire, are not available to Us. For We are truly in the power of Our enemies, rather than of Our own authority; and that very power which is granted to Us, the exercise of which depends on the will of others, and which can be taken away or diminished at their discretion, has no certain foundation of stability and constancy. Meanwhile, it is manifest from daily experience that the contagion of evil is spreading more and more throughout the body of the Christian republic, and is spreading to more and more people. Indeed, peoples who are alienated from the Church fall into ever greater miseries; and once the Catholic faith is extinguished or weakened, the path is open to the madness of opinions and the insatiable greed for novelties. It is clear that, for him who fulfills the duties of God on earth, the contempt shown for his supreme and most noble authority leaves no strong restraints on the power of men, which could restrain the unbridled spirit of perfidy, or ar-

[*Latin ed. p. 387*]

APOSTOLIC LETTERS. 387. To restrain the multitude from the excesses of liberty. And for these reasons, the civil society of men, although it has already suffered great calamities, is still threatened by greater dangers. Therefore, it is necessary for the Church to work hard and strive greatly, so that it may refute the efforts of its enemies and fulfill its duty for the benefit of all. In this vehement and varied struggle, in which both divine glory is at stake and the eternal salvation of souls is fought for, all human virtue and effort would be in vain, unless heavenly assistance were provided at the opportune times. Therefore, in these troubled and afflicted times for the Christian name, it has always been customary to seek refuge in the highest prayers, to implore God to help his Church, to grant the strength to fight, and the power to triumph. Therefore, having imitated the excellent example and discipline of our predecessors, and understanding that God is all the more merciful, the greater the power of repentance and the will to be reconciled with Him in men, therefore, for the purpose of obtaining

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heavenly assistance and helping souls, we announce a sacred Jubilee, outside of the ordinary course, for the entire Catholic world, through these Our Letters. And so, confident in the mercy of Almighty God, and by the authority of the blessed Apostles Peter and Paul, from that power of binding and loosing which the Lord has permitted us, unworthy as we are, to exercise, we grant to all and each Christian of both sexes the fullest remission of all sins, as in a general Jubilee, provided that those who are in Europe, from the coming 19th day of this month of March, in honor of the blessed Saint Joseph and the Virgin Mary, until the first day of November, solemnly in honor of all the saints, inclusive; and those who are outside of Europe, from the same coming 19th day of this month of March until the last day of the expiring year of 1881, inclusive, observe the following precepts: namely, that those who are citizens or guests in Rome may visit the Basilica of the Lateran, as well as the Vatican and the Liberian basilicas, twice, and there, for a certain period of time, offer devout prayers to God for the prosperity and exaltation of the Catholic Church and this Apostolic See, for the extirpation of all heresies and errors, for the concord of Christian princes, and for the peace and unity of the entire faithful people, according to Our wishes; that they fast for one day, using only food that is not meat, except for the days granted in Lent, or other similar fasts prescribed by the Church; and that they duly confess their sins to a priest.

[*Latin ed. p. 388*]

388 APOSTOLIC LETTERS. Let them receive the sacrament of the Eucharist, and, in the name of charity, contribute something to some pious work. Concerning this matter, we specifically mention the institutions to whose support we have recently commended the charity of the Christians through Letters, namely, the Propagation of the Faith, the Holy Infant Jesus, and the Schools of the Orient; and it is Our most fervent desire and intention to establish and promote these, even in the most remote and desolate places, so that they may be able to meet the needs of those places. — Furthermore, all others residing outside the city, wherever they may be, shall, at intervals of time specified below, visit the churches designated by the Ordinary of the place, or by his Vicar or Official, or by their mandate, or, in their absence, by those who exercise pastoral care there, twice, or if there are only two churches, three times, or if there is only one, six times; and they shall also perform the other works mentioned above. — We also wish that this indulgence may be applied to the souls who, being united to God in charity, have departed from this life, as a form of suffrage. — Moreover, we grant to the Ordinaries of places the power to reduce the number of visits for Chapters and Congregations, both secular and regular, for sodalities, confraternities, universities, or any colleges that visit these churches in procession, to a smaller number, according to their prudent judgment. We also

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grant that those who are traveling by sea or land, when they have arrived at their home, or at some other designated place, may obtain the same indulgence after having visited the larger church or the parish church six times, and after having duly performed the other works prescribed above. — To religious persons of both sexes, even those who perpetually reside in monasteries, as well as to all others, both lay and ecclesiastical, secular or regular, who are hindered by imprisonment, bodily infirmity, or any other just cause from performing these works, or some of them, we grant and concede that they may, with the permission of their Confessor, perform other works of piety in its place, or postpone it to another time; and we also grant the power to dispense with the usual requirements. Furthermore, we grant to all and each of the Christian faithful, both lay and ecclesiastical, secular and regular, of any Order and Institute, even those specifically named, the faculty to choose any priest, secular or regular, approved in practice, as their Confessor for this purpose; and this faculty may also be exercised by nuns, novices, and other women.

[*Latin ed. p. 389*]

APOSTOLIC LETTERS. 389 To those living within religious houses, provided that an approved Confessor is present for the Nuns. — Furthermore, on this occasion and during the time of this Jubilee, we grant to them all those very same privileges which were granted to them by Us in another Jubilee, through Our Apostolic Letters issued on the fifteenth day of February in the year 1879, which begin with the words "The Supreme Pontiffs," with the exception, however, of all those things which were excepted by Us in those same letters. That the salutary fruits which We have proposed may be more safely and abundantly obtained from this holy Jubilee, let all strive greatly that the most holy Mother of God may be honored with special devotion and worship during this time. — Furthermore, We entrust and commend this very holy Jubilee to the protection of Saint Joseph, the most chaste Spouse of the Blessed Virgin Mary, whom the glorious memory of Pope Pius IX declared the Patron of the entire Church, and whose help We earnestly desire to be implored daily by all the faithful of Christ. — Moreover, We urge all to undertake pilgrimages for the sake of piety to the shrines of the saints, which are commonly held in special religious regard in various regions. Among these, in Italy, the most sacred house of the Virgin Mary of Loreto excels, which is commended for its memory of the highest mysteries. Therefore, by virtue of holy obedience, We command and order all Ordinaries of places, and their Vicars and Officials, or, if they are absent, those who exercise the care of souls, that when they have received copies or printed examples of the present Letters, they should take care to make them public within their respective jurisdictions, and that, as far as possible, the people should be duly prepared for the preaching of the Word of God, so that they may visit the Church or Churches as indi-

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cated above. In order that these present Letters, which cannot be delivered to each individual place, may more easily come to the knowledge of all, We decree that copies or printed examples of the present Letters, signed by the hand of a public Notary, and sealed with the seal of a person of ecclesiastical standing, shall everywhere have the same validity as if the original Letters were exhibited or shown. Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the twelfth day of March, in the year 1881, in the fourth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 390*]

390 FROM THE HOLY CONGREGATION FOR THE COUNCIL, VICARIATE CHAPTER, dated March 20, 1880. SUMMARY OF THE CASE. The Prelate in Gallus reported to the Holy Congregation that, after the death of the last Auxiliary Bishop, several, and not insignificant, difficulties had arisen concerning the election of the Vicariate Chapter. For, according to the custom or abuse prevalent in Gallus, the Canons had elected two Vicars; one half of the Chapter, and the public authority, declared the election of one to be invalid, because this one had not been elected except by his own vote; secondly, he had entered into an agreement with another Canon concerning the exchange of votes; thirdly, he had established a very close blood relationship among the Canons. The Metropolitan, having been requested by the Orator to invalidate such an election, refused to do so, thereby provoking the censure of many. Therefore, in order that all controversies that might arise in the future may be prevented, and that the matter, which is of such importance, may proceed safely, the following doubts were humbly requested to be declared:

I. Whether a Canon can licitly and validly give his vote to himself, when he is not able to obtain a greater number of votes.

II. Whether an election is simoniacal and null, when two or more Canons agree in this manner: "Give me your vote, either to my relative, or to my friend, and I will give my vote to your relative or friend."

III. Whether it is permissible for Canons who are related by blood to give their votes to each other.

[*Latin ed. p. 391*]

VICARIATE CHAPTERS. 391 A synopsis of the arguments favoring an affirmative response. Firstly, it would seem that a Canon can legitimately consider his own vote, especially when he cannot obtain a greater number of votes. Indeed, this is explicitly stated by Innocent III in Chapter *Cum in iure* of the collection *De electione et electione potentis*, where it is stated that if an individual is elected by three votes, with the addition of his own vote, he is considered to have four votes, and thus a majority. And rightly so, as noted by Gonzales in his commentary on the aforementioned chapter, number 5: "For, in order that an election may be properly celebrated,

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it is only necessary that the majority of those voting be present; it is not necessary that the majority *choose* the one to be elected, but rather that the majority *be present* in his election; but if the one elected consents, the majority is present in his election, and thus the election is valid." This is further supported by the text in the section *in plane ff.*, which states that in any assembly where an individual is to be chosen by a decree of the Order and by a majority of the Decurions, as stated in *Decretum*, section 5 *ff.* of the same title. As Paul Plane states, if two factions of the Decurions are present, the one chosen by either faction can be counted. As Cuiacius notes there, therefore, in our case, the one to whom the other three have agreed should also be counted. Therefore, since the law of the Pontiff is not only valid for the specific case for which it was promulgated, but also in all similar cases, as declared by Innocent III in Chapter 19 of *De sententiis et re iudicandi*, it must be said that since the law applies to our specific case, further discussion is unnecessary. However, the text in Chapter *De avaritia*, section 6, should be considered. Although the provisions of the aforementioned chapter may seem to apply to elections, they should only be understood to apply to those elections that require the confirmation of a superior, and not to a simple appointment made in accordance with a mandate, as De Luca aptly observes in *De canonicis disc.*, number 10. Therefore, Pignatell and Leurenius, in *Leurenius in foro benefic.*, part 4, question 551, number 4, maintain that the aforementioned decree *Cum in iure* is not only correct, but should also be considered today in the election of a Capitular Vicar. And so it is.

[*Latin ed. p. 392*]

392. The Vicar Capitular. The Sacred Congregation of the Council reports that in Matheran and Acherutina in the year 1649, as Ite Luca states in the aforementioned passage, number f, "In the Chapter of Matheran," constituted by 32 votes, convened for the election of a Vicar, and in the form of "scrutiny," since in the first scrutiny no conclusion was reached for the majority, it proceeded to a second, with the prior declaration that it was permissible for each to adhere with his own vote to himself; and in this scrutiny, the elected, Johannes Bernardinus Morra, one of the capitulars, was proclaimed, having received 17 votes, although this included his own, and for this reason he was immediately recognized as the Vicar. The Dean and other capitulars appealed to the Sacred Congregation of the Council, which, after hearing both sides in favor of the elected, responded... "Let all doubt concerning this matter be dispelled, if the words of the proposed question are considered. For it reads thus: 'Can a canon licitly and validly give his vote to himself, when he is not able to obtain a greater number of votes than others?'" This information certainly cannot be considered a canonical rule, unless the election has proceeded either by public votes, or unless it is known that he has been presented by half of those present.

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Given this, it is certainly the opinion of the Doctors, and is defended by the Rota before Clement XIII, in decision 114, number 9 and following, with the Glossa in chapter Curnam De elect., that the voice of the elected increases the number of those electing, when the election is made public and by public votes; indeed, if the process has been by secret scrutiny, the elected is valid, having added his own vote, when, after the scrutiny is made public, he knows that he has been presented by half of those electing, in order to increase the number. Regarding the second question, in which it is asked whether the election is simoniacal and null, it would seem that a negative response should be given. Indeed, the extreme elements are lacking to condemn this agreement as simoniacal. Certainly, no suspicion of simony can be raised where nothing temporal, nor anything of estimable value, is given by any party. For, according to the common opinion of the Doctors, along with St. Thomas, simony is the studious will to buy or sell, for a temporal price, something spiritual, or something attached to the spiritual. But in this case, nothing spiritual, nor anything attached to the spiritual, is bought or sold for a temporal price.

[*Latin ed. p. 393*]

VICARIUS CHAPTERAL. 393 but matters of this kind are subject to change. Therefore, such agreements should not be condemned as simoniacal. Hence, the Doctors teach that a spiritual exchange between spiritual things, except for the material benefit, is not simony (Reiffenst. De Simon. % 10, n. 226; Schmalz, ibid. n. 121; Pirhing, ibid., tract. 4, resol. 150), because these agreements concerning spiritual matters are not reprobated by either human or divine law (Reiff, loc. cit.). Since, therefore, these agreements are not to be considered as simoniacal, it would be useless to inquire into the nullity of the election. Nor can canons be alleged to the contrary, which universally prohibit any agreement concerning spiritual matters as simoniacal. For, as Reiff says, loc. cit., n. 227, these speak of those agreements in which a temporal thing is given for a spiritual, or vice versa. And so, Suarez holds (lib. 4, De Simon., cap. 31; Pirhing, ibid., n. 124; Schmalz, ibid., n. 123 in fine). Hence, when there is no price involved, there is no simony. Finally, it seems that relatives can give each other their support, as is proposed in the third question. Indeed, since they have obtained possession of the prebends according to the provisions of the canons, they have a legitimate intention to vote in elections and other chapter acts. For since they are the lords of the fruits of the prebends, they are consequently also the lords of the right to choose, which is included in their fruit, according to Text. in Cap. In Genesis de elect. vers.; 'Nec praemissi, Cap. pro illorum in fine, de Praeb.; Barbosa, De Can., c. 37, n. 1; Rota cor. Seraph., Dec. 414, n. 2. This assistance of the law, which generally applies to all and to any canons, cannot be limited by the quality of consanguinity. For since canons are not expressly prohibited from giving their relatives a vote by any law, either special or

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general, the rule is that they can do so, because in matters of prohibition, that which is not expressly prohibited is considered permitted, according to Text. in L. Necnon §. Quod eis ff. Ex quibus caus. maior, Gloss, in cap. Ex litteris De iurepatr. et in cap. Inter corporalia de translat. Episcopi.

THOSE THINGS WHICH SUGGEST A NEGATIVE ANSWER. On the contrary, it is considered that a canon cannot, either lawfully or validly, give himself.

[*Latin ed. p. 394*]

"t. < - 394 The VICAR CAPITULARIS should give his vote, especially if he cannot obtain a greater number of votes in Marrum, as is inquired in the first doubt. Since rights cry out solemnly, that no one can choose himself, Cap. Final. De instit. Cap. Through our De iure patr. cap. S De excess. Praelat, for between the one giving and the one receiving, there must be a distinction, cited cap. Finali and cap. Through our, nor can one and the same person be considered under different laws, namely, the one choosing and the one elected, cap. Debitum de Bapt., L. With those ff. De usucap., L. 2. ff. De stipulât, serv. nor can anyone be the author in his own affair, L. 4. ff. De auctor, tutor., L. 4 %. It was inquired in ff. ad Trebellian. nor is a judge or witness admitted in his own cause, L. Unie. Cod. Lest anyone be in his own cause. Indeed, if a Canon could help himself with his own voice, not only would he give testimony about himself and judge himself worthy, but he would also choose himself, since an election made by others, if not celebrated by the majority, cannot be sustained. Therefore, the canons proceed so strictly, that all forms of ambition are banished from the ministers of the Church, so that they do not even allow a Canon, whose interests are at stake in the Chapter, to remain in the Chapter hall, as is testified by Scarfant. in lib. 4. tit. 4 n. 3, having been decided by the S.C.C. It is therefore not surprising that, in a matter of lesser importance, the S.C.C., adhering to the aforementioned principles, fully admitted it, despite the contrary custom, as can be seen in Ladren. Iuris suffragand. 19 Maii 4877. Regarding the first question – whether a Canon, who is proposed by the Archbishop for the office of Judge and Synodal Examiner in a case, has the right to vote in the capitular elections – the answer was – Negatively (1). The resolution of the S.C.C. in Matheranen, reported by De Luca in disc. 26 De Canonicis, seems less objectionable. For there, it was a question of a second scrutiny, and of a prior declaration, so that it would be permissible for everyone to adhere to their own vote. But it is not prohibited by law for the elected, whenever the electors agree to it, to give a vote to themselves, as the aforementioned author teaches (I), Becole si vis hanc quaestiunem Vol. X pag. 273 har. ephem."

[*Latin ed. p. 395*]

VICARIUS CAPITULARIS. 395 loc. cit. n. 9. But concerning this matter,

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neither word nor flight is appropriate. The Simonian practice, as well as any other form of election, seems objectionable due to a pact begun between the Canons, concerning a promise given to one another. Indeed, every pact in spiritual matters, or those connected to spiritual matters, induces simony, according to the text in the final chapter of *De Pactis*, and there, the Glossa on the words "cessare," where it is stated that every agreement in spiritual matters must cease, because such agreements induce simony. *Bonae*, title *De Simonia*, disputation 1, question 4, § 15, n. S. Suarez, *De Relig.*, volume 1, book 4, chapter 51, number 6. Pignatelli, *Disputationes Eccl.*, 138, n. E. Therefore, a Canon cannot, without incurring the sin of simony, vote for another in an election based on a pact made with a colleague, if that colleague promises to give his vote in another election for the office of Sacristan or Master of the choir, as *Bonae* states in the aforementioned location, question 3, disputation 1, n. 3 and following, because these offices are spiritual. But if these things are said of the Sacristan and the Master of the choir, it is certainly more fitting to say them of the Vicarius Capitularis, who exercises Episcopal jurisdiction. *Leuren*, loc. cit., question 562, n. 2; question 587, n. 1. With this established, the nullity of the election would already flow abundantly, considering the disposition in *Extravagantes*, 2, *De Simonia*. However, it must be understood that if the election truly falls into the category of simony, so that one party does not suffer harm from the pact of the other, which seems doubtful, and the case presented raises doubts, it is explained. But, assuming that the said reciprocal pact does not carry with it the least trace of simony, nevertheless, the election should be declared null and void if, as has been indicated, it falls upon one of the contracting parties. Every pact whatsoever must be entirely excluded in elections, as Gonzales states in his commentary on chapter 26 of *De Electionibus*, on the word "factum," because every and any acceptance of persons must be removed, and worldly affections must be set aside, in order that the election may be completed. Therefore, elections made through pacts, agreements, understandings, etc., from which freedom is taken away, are null: so Donat, in *Practica Regni*, part 2, treatise 1, question 9, number 1 and following. The Council of Lavor declares, in *De Electionibus*, title 4, chapter 21, number 11. Therefore, caution is urged by Hostiensis, n. 8, as related by Piton, in *Disputationes Eccl.*

[*Latin ed. p. 396*]

396 VICAR OF THE CHAPTER. See sections 400, number 409, which the Reverend Fathers commonly follow after section 36 concerning expulsions, etc. "That no one, whether separated or united, should make or subscribe to a promise, either together or individually, to oppose some evil, or to promote some good; and if they choose a person about whom they have conspired, the election must be annulled, as it is made in a manner less in accordance with canon law." It seems that a relative cannot vote for a

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relative, and conversely, this can be demonstrated by examples. Indeed, Innocent III, in chapter 35 of "De officio et potestate iudicis delegati," concerning the office and power of a delegated judge, in the case of the Canons of Genoa, wished to exclude all other Canons from the office of judge, not for any other reason than because they were associates of one of the litigants, and therefore, they were considered to be biased towards the other litigant. As the Canon stated, "Except for the Canons of Genoa, whom, since they are associates of him, the opposing party rightly considers to be suspect." Therefore, if that Supreme Pontiff considered all the Canons to be unsuitable for judging, simply because they were associates of one of the litigants, how much more so in the present case, in which not an associate is involved in the office, but rather those who are connected to the other by the bond of blood, should be prevented from voting as relatives! The Holy Congregation followed this same interpretation when a question was brought before it, concerning whether the relatives of the Bishop could cast their votes in the Chapter elections, in which matters pertaining to the Bishop himself were being considered. It was decided that all relatives and the General Vicar should abstain from voting, as they were considered suspect due to their presumed affection for the Bishop. Thus, it was decreed in Milan, January 4587, and in Ferarra, Residence, April 28, 4674. Similarly, the Most Holy Pius V, in his Constitution "Quanta," which is found in the Bullarium under number 50, forbade Bishops from conferring benefices that had been resigned in their hands to their relatives or family members. Therefore, having made these deductions from the office, the following are requested to be clarified by the Most Reverend Fathers:

[*Latin ed. p. 397*]

397. VICARIUS CHAPTERAL. I. Whether a Canon in the election of a Vicarius Chapteralis may licitly and validly give his vote to himself, when he cannot obtain a greater number of votes. II. Whether the election of a Vicarius Chapteralis is simoniacal and null, when two or more Canons agree to give votes to each other. III. Whether it is permissible for Canons who are related by blood to give votes to each other in the election of a Vicarius Chapteralis.

RESOLUTION. After mature deliberation, the Sacred Congregation of the Council decided on March 20, 1880, to respond as follows: Particular cases must be considered.

(1) Considering the gravity of the matter, the Sacred Congregation, perhaps, refrained from resolving the doubtful propositions; and it was decided that recourse should be had in particular cases. For particular cases may be accompanied by circumstances so varied that it is not possible to establish a certain rule that would apply in all cases. However, with regard to the first question, it seems, according to the opinion of the Doctors, that one elected as Vicarius Chapteralis by a majority of the voters, after a public

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scrutiny, may accede to the election, changing his vote, or consenting to the election made about himself; and this consent is considered as a vote. Furthermore, it seems that Canons related by blood cannot give votes to each other, also because, if they were in the majority in the Chapter, they would necessarily have a Vicarius Chapteralis from their family; and this would be entirely contrary to the spirit of the sacred canons. The canons prescribe that the more worthy should be chosen; but it is known that judgment is perverted when we strive to please a friend or relative. Compare, I beg you, Volume VIII, page 389, the question regarding the election of a Vicarius Chapteralis; Volume IX, page 138, another question concerning the right to vote. In these, there are many things that have a close analogy to the present matter.

[*Latin ed. p. 398*]

398 JURIUM, April 24, 1880. SUMMARY OF FACTS. The Chapter of the Metropolitan Cathedral, to which the care of souls is entrusted, was, on December 16, 1875, by order of the Archbishop of that City, and by mandate of the Sacred Congregation, invited to establish statutes within a period of six months. The Chapter, obeying the Archbishop's mandate, established the aforementioned statutes within the time limit set by the Archbishop, and without delay presented them for approval (1). However, the Archbishop refused to approve them, primarily for the reason that he found in them several things that infringed upon the Archbishop's own rights. The Chapter asserted that the faculty of electing Vicars and Coadjutors, who would administer the care of souls, had been reserved solely to it by Pope Alexander VII. The Archbishop, however, claimed that he had the right, jointly with the Chapter, to exercise this right cumulatively in such elections. The situation was such that, on April 29, 1877, the Archbishop intervened in the election of four vice-parishes and declared to the Chapter that he had been moved to conduct this election in such a way as to satisfy the votes of the Chapter itself. Feeling aggrieved by the Archbishop's actions, the Chapter, on May 30, 1877, presented a petition to the Sacred Congregation, requesting that, "after hearing both sides, a judgment be rendered both concerning the Chapter's statutes and concerning other matters." (1) Concerning the statutes of Chapters, Benedict XIII, in the Council of Rome held in 1725, Canon 4 and 5, title 2, prescribed that "ancient statutes, if any exist, and Chapter statutes should be promoted; and where they are not present, six are prescribed below."

[*Latin ed. p. 399*]

RIGHTS. Disputation 399. SYNOPTIC DEFENSE OF THE CHAPTER. The defender states that the foundation of the entire case is that the Chapter *e* and *f* defends that the Archbishop himself is not affected, and that the Cathedral Chapter possesses both habitual and actual care over the entire

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city. All canons formerly exercised care promiscuously; three centuries ago, the Chapter decreed that six canons should be elected, who would exercise their duties in turn throughout the week. However, it was deemed fitting to correct this in the Church of B., and in the year 1607, the Chapter established six churches for the purpose of pastoral care, and assigned a removable pastor to each church. Therefore, the defender affirms, the care of souls belongs to the Chapter, and thus, it cannot be argued that there is a plurality, because plurality of persons constitutes a university, and a single, fictitious person is created by the Clericatus de benef. dist. 20, no. 26, Lotter, de re benef., book 1, question 20, no. 1115 and following. But he also states that actual care also belongs to the Chapter, because removable rectors are always appointed by the Chapter to exercise this care; and because a removable vicar, even in the exercise of his duties, cannot be considered a parish priest, so that the care is not considered headless, a parish title must be established within the Chapter itself. Lotter, de re benef., book 1, question 20, no. 138, Pitonius, disc. eccl., 104, no. 29, and that at least for six months, after the publication of the present Council, they must completely fulfill [these requirements] under the penalty of ecclesiastical censure; and that both, that is, the old and the new, with regard to the statutes of the churches of our beloved city, and other matters, must be carefully examined and corrected by the respective Bishops, and presented for approval. Lest it should be thought that such a decree does not exert its binding force outside the province of Capua and Pisa (within whose limits the Most Holy Pontiff enjoys metropolitan jurisdiction), in the fifth chapter, he added: "In the meantime, this decree, together with the preceding one, is to be presented to the Chapters and Colleges of other churches, so that the Metropolitans, extending this beyond this Synod, may remember to publicly announce and enforce the aforementioned provisions for establishing statutes at the first of their Councils, and to diligently provide for their execution." The Holy Council, adhering to this prescription, whenever it has found that capitular statutes are deficient, has either completely abolished them, or ordered their reform, or has ordered them to be completed, if none existed, within six months. Puteolana, June 26, 1839.

[*Latin ed. p. 400*]

§ 400 OF RIGHTS, and following. And to this is added the fact that the exercise of the cura is usually conferred without concurrence. For the necessity of concurrence diminishes when the entire ministry is vested in the Chapter, as Barbosa de Episc., alloc. 60, n. 30, and Pasc. Jordan., tom. 2, luc. 1, lib. 1, tit. 8, n. 82, state. But all doubts concerning this matter are resolved by a judgment rendered at the beginning of the last century, which was issued by the Sacred Congregation for Bishops and confirmed by Pope Clement XI. For a dispute arose between the Chapter of B. and the Archpriest, lasting nine years, with Pitonio praying for the Chapter, until a judg-

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ment was rendered, which assigned the entire cura to the aforementioned Chapter, but considered that no right belonged to the Bishop. Indeed, there are testimonies from several Bishops which confirm that the cura of souls belongs to the Chapter. After this judgment, no change was made, and the Chapter, without the Bishop, always elected and appointed the parish priests and vicars, merely requesting the confirmation of the Antistite for the administration of the sacraments. Then, refuting the objections of the Archbishop, he stated: nothing can be inferred from the fact that the fourth part of the funeral expenses is paid to him: for it can often be paid either by agreement, or because of the poverty of the table, as stated by Ferraris, V, fourth part, n. 40, and Lotter, de re Benef., I, 4, quaest. 20, n. 135. Likewise, nothing can be inferred from the fact that the Antistite chooses one of the two stipends of the Chapter, the other belonging to the Chapter, because Benedict XIII established this by his Apostolic Letters, "Maxima vigilantia." Nor is there any obligation for the sacraments of Baptism and marriage to be administered with the consent of the Bishop and the Chapter, because jurisdiction in the cura of souls does not consist in the exercise of one or the other act, but in the entire ministry of the law. Having explained these matters truthfully, it is clear that the objections do not affect the cause. For they prove nothing other than a cumulative effect in certain acts: and since the exception strengthens the rule in the opposite direction, the entire cura always remains with the Chapter. Indeed, the effects of prescription can extend to other acts than those which are clearly demonstrated, as De Luca misceli, disc. 38, n. 13, states. Furthermore, even if everything that the Prelate claims were granted, nothing would follow in this case, because the dispute concerns the right to appoint and remove vicars and coadjutors.

[*Latin ed. p. 401*]

JURISDICTION. 40. The tutors, not concerning cumulative rights in certain other acts. However, in their election, the Archbishop never alleged any custom or prescription. The defender, speaking against the objection that the elections were completed after consultations between the Archbishop and the chapter, said: The Archbishop has devised very serious acts without any proof, which is entirely lacking. Soon, arguments are presented which the Archbishop brings forth concerning the establishment of the law. And first, he says, it does not befit the care to be exercised by removable rectors, because the Council of Trident, from chapter 7, session 7, concerning reforms, and from chapter 13, concerning reforms, session 24, detests removability in parishes. Regarding the decree in chapter 13, session 24, the defender of the chapter says that it pertains to parishes which do not have fixed boundaries, or in which the care is exercised promiscuously. Pignatelli, *Consilia*, Tom. 9, consult. 143, no. 14. As for chapter 7, session 7, it leaves the matter between perpetual and precarious tenure in such a way that it inclines towards removability, as is clear from the text of

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the law, and as Pignatelli teaches, *Consilia*, Tom. 9, consult. 143, no. 14. Nor did the Constitution of St. Pius, "Ad exequendum," introduce anything new, which concerned itself with due consideration in perpetual parishes. It presumes that in those churches, the authority granted by the Synod could be exercised: but the Synod requires a grave and weighty reason for the exercise of authority, even in judgment. Barbosa, *De Episc.*, alloc. 72, no. 190; Pignatelli, *Consilia*, Tom. 9, consult. 143, no. 14. It cannot be admitted by prudent judgment that the designation of a precarious care of souls is harmful, and that this alone suffices for a reason for the exercise of authority. Navarr, *De Offic. Vic.*, consider. 11; Pikier, *Tract. de Vicariis*, lib. 3, d. 10. Indeed, in the custom of the Church, which is considered law, it is commonly seen that the care is entrusted to removable vicars: Benedict XIV, in the Apostolic letter "Suprema dispositione," January 19, 1752, in the constitution "Ad honorandam," § 41, and in the constitution "Regis pacifici." Two things are said to be to be avoided, according to the mind of Trident, and according to the more usual discipline of the Church: namely, that the care itself, and not merely the ministry, is conferred upon removable vicars, and that the care is exercised promiscuously: but neither of these occurs in the parishes in question, but only in the ministry of vicars. *Acta*, Vol. XIII, p. CLIII, 26.

[*Latin ed. p. 402*]

402 RIGHTS. A right is conferred. Therefore, no consideration of arbitrary power should be introduced to ensure its perpetuity, but nothing should be innovated from secular usage. The "Rota" before Ansaldo in Arezzo, in the collection of paternal laws concerning good order, January 16, 1808, §. Furthermore, in decision 212, paragraphs 3 and 4, and in "Rec." 17, all of this refers to the definition of the Council of Trent concerning the union of cases. However, if a certain Chapter primarily and by its original constitution has jurisdiction, the constitution of a perpetual vicariate is not only not required, but is entirely disapproved. "Ventriglia, practice, regulations, notes, additions, paragraph 4, number 2, § 2, number 4, Sacred Congregation." "Concilii in Baren, Care of Souls, February 5th and August 27th, 1706; in Aliphana, Care of Souls, January 12th, 1726, and March 15th, 1856." The Chapter, it contends, can demonstrate, from the original constitution, a collection of factors (1). Having expounded these objections outside the order of the questions, we return to the order of doubts, and first speak of the right to remove. This, above all, is proven by election and nomination according to the will, which is usually done by the Chapter. For he who is delegated precariously can, at any time, be deprived of his office. Nor should the custom be overlooked, which is evident from the synopsis of elections and removals, and the Archbishop's persuasions, that he should exercise his authority over the Chapter. Nor should it be feared that the Archbishop's authority will be diminished: since the power

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to remove belongs to the inferior, the Ordinary is not prohibited from exercising his authority. One thing must be noted: the Chapter, however it may wish, can remove; the Bishop cannot, without cause. "Benedict XIV, in the book on Synods, book 12, chapter 1, number 2, Fagnan, in the chapter, concerning monasteries, on the status of monks, number 39." The Chapter, moreover, has given an example of modesty in the repeated readings of the constitutions, and has added the right to remove only from a grave cause. Passing to the second doubt, he speaks of the election, conferred by the Archbishop on May 28th, 1878, on four priests, to the office of coadjutors. This, he says, is unjust and infected with nullity, because it was done while a dispute was pending. Although the Archbishop may have a cumulative...

(1) See Appendix III in Volume IX, page 614.

[*Latin ed. p. 403*]

JURIS. 403 praesumit haberet, solus nominare non poterat. Cum vero cummulativam nullo modo habeat, non Archiepiscopi sed parochi est vicarium coadiutorem eligere, ab Ordinario probandum. Neque ab Antistite obiciendum ea de causa nominavisse, ut Capituli negligentiam suppleret, quod nominare debuisset nec nominavit. Negligentiam enim non probari, ait defensor; quae licet confingeretur, terminus Capitulo praefigendus fuisset ut in mora constitueretur. Mox ad tertium dubium pergit de constitutione libellarum annuarum quingentum in singulos substitutos coadiutores. Id a summo Pontifice provisionis loco Archiepiscopum obtinuisse ait: ipse enim fatetur eum concessisse « Salvis iuribus partium quoad controversias penes s. Congregationem deductas, lite pendente et donec aliter non decernatur ». Sed nullam in primis stipendii augendi causam esse. Non enim de parochis, vel de vicariis perpetuis disputatur, sed de substitutis ad nutum amovendis, pro quibus nisi rationabilis causa intersit, locus non est congruae augmento. Ferraris voc. Congrua art. 2 num. 38 seq. Sed etsi augendi stipendii necessitas immineret, nunquam onus Capitulo imponendum ait. Archiepiscopus enim sexdecim libellarum millia canonicis parochis et coadiutoribus Fiscum in invasione adscripsisse dicit, quae a capitulari patrimonio seiuncta sunt. Id autem Capituli defensor alienum a veritate asserit. Tota vero huius substantia, quam fiscus reliquam illi esse voluit, non amplior est libellis 3 2 , 4 4 0 quae ex variis expensis ad annuam quantitatem cohibe tur libellarum 6 2 2 3 . Symbola igitur cuiusque canonici vix annuas quingentum libellas atting i t ; ac si ex capitulari acervo libellae 1451 detraherentur ut coadiutorum stipendiis accederent, longe amplius emolumentum vicariis substitutis quam canonicis adscriberetur. Quod absurdissimum defensor dicit, quia parocho prius consulendum est, deinde quod superest vicario indulgendum Bouix de parocho part. 3 cap. 5. Si vero quod superest ad congruam coadiutorum sustentationem non sufficiat, tunc Episcopus pro viribus ad conferendum quantum decet adstringitur Ferraris voc. coadiutor num. 4 0 .

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RIGHTS. 403 presumes that he had the right, but he alone could not name [the candidate]. But if he does not have a cumulative right, then it is the duty of the parish priest, not the archbishop, to choose a coadjutor, which must be approved by the Ordinary. Nor can the prelate object that he nominated for this reason, in order to supplement the negligence of the Chapter, which should have nominated but did not. The defender says that negligence cannot be approved; although it may be admitted, a term should have been set for the Chapter so that it would be in default. He then proceeds to the third question regarding the allocation of five hundred livres annually to each substitute coadjutor. He says that the Supreme Pontiff obtained this for the archbishop as a provision: for he himself confesses that he granted it "with due regard to the rights of the parties concerning controversies pending before the Holy Congregation, during the litigation and until otherwise decided." But there is no primary reason for increasing the stipend. For it is not about parish priests, nor about perpetual vicars, but about substitute vicars who can be removed at will, for whom, unless there is a reasonable cause, there is no place for a proper increase. Ferraris, voce Congrua, art. 2, no. 38 and following. But even if the necessity of increasing the stipend arose, he says that it should never be imposed as a burden on the Chapter. The archbishop says that he has assigned sixteen thousand livres to the canonical parish priests and coadjutors from the funds of the treasury, which are separated from the Chapter's patrimony. But the defender of the Chapter asserts that this is contrary to truth. The total amount of this substance, which the treasury wanted to leave to him, is not greater than three thousand two hundred and forty livres, which are reduced from the annual amount due to various expenses, amounting to six thousand two hundred and twenty-three livres. Therefore, the annual income of each canon is barely five hundred livres; and if one thousand four hundred and fifty-one livres were deducted from the Chapter's funds to be added to the coadjutors' stipends, a much larger sum would be assigned to the substitute vicars than to the canons. This is what the defender says is absurd, because the parish priest should be consulted first, and then what remains should be given to the vicar, Bouix, on the parish, part 3, chapter 5. But if what remains is not sufficient for the proper support of the coadjutors, then the Bishop is bound to grant as much as he can, according to his ability, Ferraris, voce coadjutor, no. 40.

[*Latin ed. p. 404*]

404 RIGHTS. Then, he discusses the fourth formula of doubt: whether the right to choose and remove vicars belongs to the Chapter or to the Archbishop. Two centuries ago, the Chapter appointed vicars from the clergy attached to the Church, and decreed that three hundred silver coins should be paid to them from the Chapter's treasury; this was approved by Pope Alexander VII. Therefore, Gagliardi, in *De iure patr.*, chapter 5, num-

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ber 19, states that the endowment itself derives the right of patronage to the Chapter. Furthermore, the defender argues that the entire question is resolved by the eloquent and never-interrupted custom of two centuries, which is demonstrated in the summary syllabus of appointments and removals made by the Chapter up to the present time. Indeed, it is known in secular law that every title is presumed to be the best and oldest, unless it is proven otherwise, as stated in *Rota in Spoletana iuris pascendi et lignandi*, June 4, 1745, § 45; *Mulino ex in confirmatoria die S Iulii 4748*, § 8; *Bussio*, § 8; and in the decision of July 7 concerning the union, *Falconerio*.

DEFENSE OF THE ARCHBISHOP. The Archbishop B., on the contrary, arguing against what is presented in the first doubt, contends that the Chapter members should be dismissed from the very beginning of the proceedings, because their alleged rights, namely, to choose and remove vicars and their substitutes and coadjutors, completely lack any solid foundation. Indeed, it is established by law that Archbishops and Bishops have received from the Supreme Pontiff the power to confer any benefice in their diocese, which is not specially reserved by law. Hence, it follows that the collation and institution of all benefices existing in the diocese, by right, belong to the ordinary local Bishops, who have a common intention in conferring benefices existing in their diocese, as stated by Barbosa in *De offic.* and *Potest. Ep. Alleg.*, 57, number 1, citing *Cap. Omnes Basilicae*, chapter 46, question 7; *Gonzales ad Regul. 8 Cancell.*, § 4, preface, numbers 21 and 22; and *Glos.*, 41, numbers 88 and 39, and many others. The power, however, which is granted to Bishops by common law to exercise concerning benefices vacant in their diocese, the Council of Trent explicitly grants to them in its entirety, concerning benefices that have become vacant for any reason, as it is read in chapter 48 of session 25 concerning reforms.

[*Latin ed. p. 405*]

LAWS. 405 From these matters considered in law, it spontaneously follows that all those, whether private individuals or members of a College, who claim such rights that belong to the Bishops, must be compelled by positive and conclusive proofs to demonstrate that these rights pertain to them. The Canons believe that this presumed right belongs to them by virtue of a Bull of Alexander VII; in which, however, not a single word is mentioned concerning this right. Furthermore, the Archbishop argues that they cannot obtain a *praesidium* (legal protection) from the numerous documents which they have presented, in order to compel them to allow these individuals to claim such a private right. For the Archbishop warns that these documents can only demonstrate that such a private right belongs to the Chapter solely by virtue of custom or prescription. But there is a canon of law by which no one else is more well-known, which states that

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the rights of Bishops cannot be prescribed by any interval of time. Since this is the case, the Archbishop concludes that the Chapter of B. cannot possess any right in the appointment of substitutes for the pastors, and of their coadjutors, which, according to the judgment of canon law, pertains solely to the Bishops for their diocese. But even if the Chapter were to claim some right in making such appointments, it must be maintained that this right must be exercised jointly with the Archbishop. And this is justly so: for it is well known that the Archbishop is the head of the Chapter, Cap. Novit., concerning those things that are done by the Prelates, and consequently, the principal part of the Chapter itself, Scire 7 q. i. After these matters, he proceeds to the second question, which concerns the election of four substitutes, carried out by the Archbishop on May 29, 1878, and maintains that it must be upheld. He argues that this election took place because the good of the spiritual welfare of the flock entrusted to his pastoral care required it; and especially to grant the requests of the Canons, who had appealed to the Archbishop, asking that he, through the election of four substitutes, would attend to the affairs of parishes that were not going well. Therefore, the Archbishop did not infringe upon the rights of the Chapter by holding this election; but rather, the Canons themselves, for that occasion at least, spontaneously and freely declared their own rights.

[*Latin ed. p. 406*]

406 JURISDICTION. Having these points established, the Archbishop argues that the Chapter is now striving to rescind what it previously requested, as stated in Regulation 21 of Regulation I, section 6. – there – "What has once pleased cannot subsequently displease." Another principle of law agrees: "No one can change their decision to the detriment of another," Regulation 33, section 6. Furthermore, it is of no benefit that what is presented in opposition is that the Chapter never granted the power to make the aforementioned nominations of substitutes. The Archbishop refutes this objection with all his might: "It is known to no one that a bishop must give full credence to reports concerning matters within his diocese." Regarding the third point, the advocate stated: "The portion of income due to vicars, who exercise the care of souls, must be a suitable amount drawn from the parish revenues, and no one can question this." This is proven both by divine law and by canon law. Moreover, it is derived from the most recent law: indeed, in Chapter 5 and Chapter 7 of Session 7 on Reform, the Council of Trent decreed that such a suitable amount, with the authority of the ordinary, and at his discretion, should be determined and assigned to the vicars. The provision of both laws is so clear and so evident on this matter that no sane person would dare to question it. Rather, the question of the amount that should be determined for each vicar, and of which matters the suitable portion should be assigned, has often been debated among scholars and before the sacred tribunals. Whether it

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should be drawn solely from the revenues and fruits, or whether it should also include uncertain emoluments and profits. But whatever may be the controversy on this matter in law, it has been revealed in the present investigation that the Sacred Congregation of Councils has consistently practiced assigning at least one hundred scudi for the honest sustenance of the parish priests, as stated in the document from Civita Castellana of November 24, 1821. Regarding the second point, concerning how, and in what amount, a suitable sum should be provided to the Archpriest, etc., the E.E.P.P. decreed: "Affirmatively, in annual scudi of one hundred, to be paid by the administrator, in addition to any uncertain revenues." This is confirmed by the document from Todi of April 27, 1822.

[*Latin ed. p. 407*]

JURISDICTION. 407. Decree of Ascoli, July 21, 1827, §. Furthermore, the Decree of Augmentation of Eugubina, February 5, 1876. From what has been discussed thus far, the Archbishop B. concludes that it is not exorbitant, either by law or by the practice of the Sacred Congregation of the Council, to assign to the Parishes a yearly sum of one hundred scudi. Therefore, if the same Archbishop has decreed a sum of five hundred scudi as a grant for the Parishes or Vicars of the City B., it seems that the decree of the Archbishop should be confirmed by the judgment of the Sacred Congregation of the Council. However, it may be objected in this case that we are not dealing with permanent Parishes or Vicars, but with Parishes or Vicars who, since they are removable at the will of the Chapter of B., ought to be content with a simple salary, or with compensation for the work undertaken. This objection, however, is readily answered by noting that the Council of Trent makes no distinction or difference between permanent Vicars and those who are removable; therefore, the same subsidies should be granted to both. Finally, addressing the fourth question, the Archbishop states that the right to choose and remove the hebdomadary belongs to him by virtue of the Bull of Alexander VII. However, desiring to resolve the matter through amicable agreement, he proposes a scheme of conciliation for the approval of the Sacred Congregation of the Council. With these considerations in mind, the following questions remain to be resolved by the Most Reverend Fathers: I. Does the Chapter have the right, by law, to choose and remove Parishes, Vicars, substitutes, and their assistants, either exclusively or jointly with the Archbishop in this case? II. Is the election of the four substitutes, whom the Archbishop named on May 29, 1878, permissible in this case? III. Is there a basis for establishing a stipend of five hundred scudi per year for each of the substitutes in this case? IV. Does the right to choose and remove the hebdomadary belong to the Chapter, or

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rather to the Archbishop in this case?

[*Latin ed. p. 408*]

408 OF RIGHTS. RESOLUTION. After deliberation by the Sacred Congregation on April 24, 1880, it was decided: Regarding I. Affirmative concerning the first part, negative concerning the second, and further. Regarding II. Affirmative, with the consent of the Chapter and further. Regarding III. Negative, and further. Regarding IV. Affirmative concerning the first part, negative concerning the second, and further. FROM WHICH IT MAY BE GATHERED: I. Parishes can be united to Chapters in two ways: namely, through a subjective union, primarily and by original institution, or through a union which they call accessory. II. When the care of souls belongs to the Chapter in a principal manner, or through a subjective union, the Chapter cannot, by common law, be compelled to appoint perpetual vicars; but Chapter officials, through temporary vicars duly constituted, can exercise actual care (1). III. Such a vicar does not exercise the parochial ministry in his own name, but in the name of the canons or the college; since the right of the parish belongs to each canon in solidum, and one is not a rector except the Chapter and the canons in their entirety. IV. It appears that the Cathedral Chapter, by original institution, possesses habitual and actual care throughout the entire city. V. The canons formerly exercised actual care, or the ministry of the parish; but now it is exercised by six vicars (for six (1) By common law, a bishop cannot compel a chapter, which has a parish by original union, to appoint perpetual vicars. However, it is evident to many, as demonstrated by the arguments presented by Fagnanus in the Appendix, Volume IX, page 614, that it is expedient for the Apostolic See to decree the appointment of perpetual vicars. See Volume IX, pages 208 and 604.

[*Latin ed. p. 409*]

I. (409) The Chapter established a number of churches for the exercise of pastoral care within the city, which are removable at will, and the title of parish is established within the same Chapter, so that the care may not be considered headless. VI. Therefore, the Chapter, possessing both habitual and actual care, through subjective union, can freely choose and remove vicars, and nothing else should be demanded of the Ordinaries, except for the confirmation of the vicars for the administration of the Sacraments. VII. However, when a parish is united in the second manner, namely, through an accessory union, according to the opinion of the Doctors, the Bishops can compel the Chapters to choose perpetual vicars; for in this case, the Chapter is not the true parochus, nor does it have an immediate office concerning souls. (1) VIII. In this matter, all questions have been resolved through the custom of two centuries, whereby the canons have privately chosen and removed vicars without the intervention of the Archbishop,

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and nothing to the contrary has been demonstrated. (1) Through an accessory union, the Chapter possessing the parish, if a perpetual vicar is appointed, suffers almost no harm to its own right, because it possesses it as a temporal thing, to which the office of pastoral care is annexed. If, however, through subjective union, a perpetual vicar were to become the true parochus, even without a title, the Chapter would be deprived of the right and office of the parochus. FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS CONCERNING FUNERALS AND REVENUES. On May 7th and September 17th, 1880, a SUMMARY OF FACTS. Gregory XV, on February 28th, 1621, through the Bull *Regimini universalis*, to the Pious Congregation of the Oratory, erected in the city of Bononiae, "and to its priests, clerics, and..."

[*Latin ed. p. 410*]

410. OF FUNERALS AND BENEFITS. "To other persons, whether present or future, to all and each, of privileges, faculties, liberties, immunities, exemptions, prerogatives, preeminences, concessions, and the right of burial, without prejudice to the rights of the parish priest... to be able to use, enjoy, possess, and benefit." These privileges were granted to the Congregation of the Oratory by another Bull, dated April 21, 1823. Because of these privileges, and especially the right of burial, many disputes arose between the Fathers of the Oratory and the parish priests of that city. The parish priests contended that the sacred rites and funeral services belonged to them over the deceased who were buried in the Fathers' Oratory, whether they had been baptized or not. On the other hand, the Fathers maintained that they had the exclusive right to perform the funeral rites and to receive the benefits from the deceased, even if the bodies of the deceased had been exposed in the parish church. The matter was brought before the Episcopal Curia and the Sacred Rota, and when a final judgment was about to be rendered, the Bishop, with the parties in dispute present, arranged for a settlement of the disagreements. By this settlement, it was agreed that a notification would be sent to both parties regarding the disputes initiated by each side; that in the future, the funeral in the Church of the Fathers would be performed by the parish priest up to the point of exclusive jurisdiction, and that in the case of infants, the entire service would be performed by the parish priest; that no one would recover the expenses of the litigation; and that the benefits would be received by the Fathers of the Oratory, except for one-quarter, according to custom, for the benefit of the parish priest. This settlement received its sanction from an audience with the Holy Father, through this Sacred Congregation. The disputes, which had been silenced until the year 1861, arose again when the Fathers were unjustly expelled from their asylum. From this event, the parish priests believed that the Fathers no longer constituted a religious family that could enjoy the Apostolic privileges. Therefore, the parish

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priest, in whose parish the Church of the Fathers was located, unaware of this, brought bodies to their church and performed the funeral rites over the deceased who were buried there, whether they had been baptized or not.

[*Latin ed. p. 411*]

FUNERALS AND BENEFITS. 41. The Fathers then approached the Most Reverend and Most Reverend [ecclesiastical superiors], requesting 1. that the transaction of the year 1859 be fulfilled, concerning the deceased who must be buried in their church, and that they have there their own or a designated burial place; 2. that it not be permitted to the Parish Priest in the aforementioned Church of the Fathers to perform any function, nor to carry corpses for the purpose of conducting funerals.

DEFENSE OF THE PARISH PRIEST. The Parish Priest argues that the Fathers of the Oratory can no longer enjoy the privileges granted to them by the Supreme Pontiffs, because they do not live a common life, according to the instruction of the Holy Penitentiary Congregation of April 18, 1867 (1); while they possess the means and suitable resources, as other Fathers of the same Oratory have done when struck by unjust laws. It is certain, from the practice of the Holy Congregations, that all privileges and exemptions are suspended by the suppression of religious orders, even if unjust, and that the Church of the Oratory has passed under the jurisdiction of the Ordinary. For, according to the cited Instruction of the Holy Penitentiary, a church and the house of a religious order enjoy immunity when the Brothers live together in a number of three or more, and hold the churches and houses of their Order. But the Fathers of the Oratory do not live a common life, nor do they ever meet in the monastery to discuss the affairs of the Order. Therefore, the Parish Priest argues: since the Church of the Fathers has passed under the jurisdiction of the Bishop, and remains within the limits of his parish, it undoubtedly belongs to him to perform the sacred functions therein. This derives its force from the very fact that, after the suppression, no one from among the Fathers has been legitimately appointed to preside over the aforementioned Church, according to the cited Instruction of the Holy Penitentiary; from which all controversy regarding the exercise of the rights of the Fathers therein is eliminated. Furthermore, the Parish Priest also observes that, by common law, it belongs to him to perform funerals, Council of Trent, Session 21, chapter 13, Glossary in Clementine; and that the benefits of funerals pertain to the Parish Priest because of the administration of the sacraments, Barbosa de cap. Paroch. 25, n. 19, 32, Schmalzgrueb, title 28 on burials. Moreover, the privileges... (1) See Volume III, page 151.

[*Latin ed. p. 412*]

4 1 < ? OF FUNERALS AND PRIVILEGES. The Fathers can no longer

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be attended to; and because, as cited from the Bull of Gregory XV, these privileges were granted to Religious who constitute a moral body: for many years, the pious and beneficial Congregation of the Oratory, instituted by St. Philip Neri, has been commendably exercised by these Fathers, who have been meeting together in common under one and the same group. When the same Pontiff grants privileges and rights concerning burial, he speaks only to the Congregation of these Fathers or to the members thereof associated together. Therefore, since this Congregation does not exist, the exercise of these privileges and rights at least remains suspended. (1) Furthermore, the Parish Priest argues that the suppression of the privileges of Regular Canons suspends them, according to the Decree of the Congregation of Bishops and Regular Canons in Piacenza, on February 26, 1864: Regarding the proposed question: "To whom does the right of performing the funeral rites belong with regard to deceased Regular Canons, given the current state of affairs?" the response was: "Affirmatively, namely, dispersed Religious are subject to the Parish Priest of the place, just as other parishioners are." (2) DEFENSE OF THE FATHERS. The Fathers primarily claim the right of burial, and they state that, by virtue of the agreement of March 24, 1859, it is not permitted for the Parish Priest to perform any function, or to transfer the bodies into the Church of the Order: for the Fathers of the Oratory still exist before the Church. Indeed, as Bald. Margar, in *Ad Innocentium*, writes in the word "Civitas" ("City"), "Colleges, Churches," all these things can be destroyed by the authority of a superior, for a just cause. If, however, by force, by brigands or tyrants, a monastery is seized and destroyed, nevertheless, it lives in a certain sense without any material body; and the soul, so to speak, exists without a body, and retains all privileges and other rights which endure; Piton, *Disputationes Ecclesiasticae*, n. 8; Suarez, *Tractatus de Legibus*, lib. 8, cap. 5, n. 7; Lotter, *De Re Beneficiaria*, lib. I, q. 14, n. 108. (1) See the Acts of the Holy See, vol. I, page 239. (2) Please note that in Piacenza, the deceased himself and other Religious gave their consent, and that those Religious were considered as secularized; while they were able to retain money, at least for their daily sustenance, and to enjoy freedom, which they did not have in the Religious life. See vol. I, page 164.

[*Latin ed. p. 413*]

FUNERALS AND BENEFITS. 413 This principle holds true, even if one remains who is able to exercise the rights of the body or the college, according to the accepted conclusion that the rights of the college remain even in one, as Piton states, cited, discourse no. 18. Barbosa, *Summa Apostolica*, under the word "Collegiata," no. 5. Pignatelli, *Consultationes*, 150, no. 4, vol. 9. The parish priest, however, asserts that the Fathers of the Oratory no longer exist, because, having been unexpectedly struck by suppression, they have retired to private homes. Nevertheless, as soon as the Oratory

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was reopened, the same Fathers did not fail to celebrate the sacred rites therein, to perform the functions of Holy Week, prayers of novenas and triduums, to administer the sacraments of confession, and to provide sacred furnishings and other necessities. It is not necessary that the Fathers of the Oratory live together, in order that they may certainly enjoy the rights and privileges granted to them; for such prescriptions concern true regulars, who, by living independently and dispersed, strengthened the nerve of ecclesiastical discipline, so that they might preserve personal privileges. But things are quite different with regard to the Congregation of secular priests, such as the Fathers of the Oratory; who are bound by neither solemn nor simple vows; and who, lacking a proper house, were forced to seek private homes; but who are ready to return to a common house, when circumstances permit. Furthermore, the Fathers seek to demonstrate that the agreement of March 14, 1859, is still in force, even if the Congregation itself is considered suppressed. For the Church of St. Philip, whatever may be the case, still enjoys an exemption from any parochial jurisdiction, according to the cited Bull of April 21, 1723. And this has been judged to be true by the opposing party, so that, in order to refute the claim of the right to perform burials, recourse was had to custom. Furthermore, the right of burial in this church is proven by the existence of ancient tombs located therein. If the agreement is to be maintained, then it follows that the parish priest can perform funeral rites only up to the third day; and that the emoluments of funerals must be ceded to the church, except for the fourth day. Furthermore, the Sacred Rota has taught that the performance of funeral rites implies jurisdiction; *Decis, coram de Magno, n. S*.

[*Latin ed. p. 414*]

414. CONCERNING FUNERALS AND FEES. "Since the performance of funeral rites requires jurisdiction;" and since jurisdiction cannot be exercised in places and churches legitimately "exempted," it necessarily follows that they cannot be admitted [to these rites]... The Fathers maintain that all funeral fees, except for the fourth, belong to them by virtue of the transaction itself: all funeral fees are due to the burying church, except for the fourth, which is to be paid to the Parish Priest, cap. from the part concerning burials, Clement, cited above, title. And they state that the words "due to the burying church" must be considered; therefore, the fees are to be paid not to the rector, but to the church. Furthermore, it must not be overlooked what the Consultor stated in Urbinata. On March 20, 1880, concerning a situation in Forlivien, regarding the jurisdiction of funerals of September 16, 1814 (1): Whether "the Carmelite church still enjoys the right of burial, so that" the office of performing the funeral rites belongs to its Rector "over the bodies of the deceased, who are buried in its" gentile cemetery? The Congregation of the Council responded: affirmatively, according to the testimony of the Rota. They maintain that, through secularization, privileges

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concerning the regularity of religious life are abolished, but all other rights remain to the church itself, both passive and active. Similarly, the right of burial was asserted by this Sacred Congregation in Pergulana, although the PP. of the Congregation of the Oratory had been expelled from there. Therefore, it makes no difference whether the religious are observing the conditions of regular life or not, since the choice of burial is not a privilege of theirs, but of the church of St. Peter. Nor should it be objected that now everyone must be buried in the common cemetery; for this objection is refuted by numerous resolutions of the Sacred Congregations, from which it is deduced that, with the erection of cemeteries, nothing has been taken from the Parishes, nor has their income increased, see S.C.C. in Ariminen. Concerning the jurisdiction of burial and funerals, March 4, 1825, Forlivien; jurisdiction of funerals, September 4, 1874. Furthermore, the Fathers attempt to demonstrate that there is no right for the Parish Priest to perform the functions [of a funeral] in their church, even if the Fathers themselves do not wish to be considered as Rectors of that church. (1) This question was presented in volume VII, page 25 of these epistles. In it, the Most Reverend Monsignor Avanzi has collected numerous arguments and statements that are very helpful in explaining the present question.

[*Latin ed. p. 415*]

FUNERAL AND BURIAL RITES. 415 And because this [church] is exempt from all jurisdiction by Apostolic Indult. It cannot be said that the Parish Priest can perform functions in the same church, because this [church] is located within the boundaries of his parish; for parochial functions are only permitted to the Parish Priest in churches located within the boundaries of his parish, so decreed in Aesina, concerning parochial rights, on August 25, 1877. From this, the Fathers argue: if the Parish Priest cannot perform functions other than parochial functions in the aforementioned churches, then it follows with greater force that this applies to an exempt church. With these premises established, the following questions were submitted to the superiors for clarification: I. Whether and how the agreement of March 14, 1859, should be observed in this case. And, if affirmative, II. Whether and from what amount, and from what date, the funeral fees received by the Reverend Father s. Ben. in this case should be returned. III. Whether, in addition to the above, the Reverend Father s. Ben. has the right to perform functions in the church of the PP. Philippinorum in this case. RESOLUTION. The Sacred Congregation of Bishops and Regulars, after deliberation, on May 7, 1880, decided to respond: To the first question: Affirmative. To the second question: Affirmative, from the date the dispute arose. To the third question: Negative. On September 17, 1880, the same Sacred Congregation, being again consulted to reform its judgment, responded: In the decisions and further. FROM WHICH ARE DEDUCED THE

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FOLLOWING CONCLUSIONS: I. The right of burial belongs to other Orders either by a privilege expressly contained in the law, as Clement. 2 previously stated, or to others, either by the communication of privileges, or by special constitutions. II. Since the choice of burial is a privilege not so much of the Regular Canons, as of churches and citizens, it seems to make no difference whether the conditions of regular life are observed or not, in order to maintain such privileges.

[*Latin ed. p. 416*]

416. CONCERNING FUNERALS AND RELATED FEES. III. For, although perhaps originally granted with a view to particular individuals, this right, as it were, inheres to the church itself, and remains even after an illegitimate suppression, until such time as temples of this kind are deprived of such privileges by legitimate authority. IV. From the jurisprudence of the Sacred Congregation of the Council, concerning this matter, it appears that, through secularization, privileges pertaining to regularity are considered to be removed; in other respects, all rights, both active and passive, remain fully with the Church itself. V. Therefore, nothing prevents the Fathers, who, by a special Constitution, possess the right to bury within a certain area, from performing the funeral office over corpses, and from receiving funeral fees, provided that this privilege has not yet been taken away by legitimate authority. VI. It has been repeatedly decided by the Sacred Congregation of the Council that the parish priest has the right only to perform parochial functions in churches located within the boundaries of his parish, which churches, however, do not enjoy the privilege of exemption according to the laws of canon law. — CONCERNING FUNERALS AND RELATED FEES (1). On September 17, 1880. SUMMARY OF THE CASE. The Reverend Provincial of the Order of Friars Minor Observant presented to the Sacred Congregation of the Eparchy and Regular Canons: that frequently (1) Readers should be aware that this question has been addressed by civil law with regard to public cemeteries. However, the doubts presented here, with careful examination, will resolve many disputes. For, less correctly than many of the Catholic clergy have believed, the civil provision, which orders that bodies be buried in public cemeteries, has altered all the rights concerning the right of burial held by both parish priests and churches. Therefore, zeal for the protection of one's own jurisdiction, and perhaps even an insatiable greed for money, often inflames minds. Hence, disputes and lawsuits have originated from death itself, so that, even with these additions, the statement of Pigna has been confirmed.

[*Latin ed. p. 417*]

FUNERARY AND BURIAL RITES. It may happen that the bodies of the deceased are carried into the churches of Religious Orders for the pur-

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pose of performing funeral services; after which, the same bodies must be transferred to the public cemetery. Since it is clear from various resolutions of the Holy Congregations that the rights of the parish priests over the bodies of the deceased cease immediately upon the reception of said bodies into the churches of the Religious Orders, a doubt has arisen as to to whom the right belongs to accompany the bodies from the churches of the Religious Orders to the public cemetery. This doubt often gives rise to countless disputes and litigations between the parish priests and the Religious. A concise summary of the rights of those who observe the lesser rites is as follows: Lantusca, in his work *Theatrum Regularium*, under the word "Association of Bodies," states: "In an 'association,' or occasion of an association of bodies, it is not permitted for parish priests to enter the churches of the Religious, but they are obliged to leave the bodies at the door of the aforementioned churches, and there only can they bless them and give them the last rites; and the funeral services must be performed only by the Religious themselves." To strengthen this principle, the author cites a Bull issued by Pope Clement X, in which he confirms the decree of the Sacred Congregation of Rites, namely, that it is not permitted for parish priests, on the occasion of an association of bodies, to enter the churches of the aforementioned Religious, but they are obliged to leave the same bodies at the door of the churches, and there only can they bless them and give them the last rites; and all the offices and duties that are usually performed in such services must be performed by the Religious themselves. The decree confirmed by Clement X is of this tenor: "To parish priests, in an association or on the occasion of an association of bodies, it is not permitted to enter the church of the aforementioned Religious, but they are obliged to leave the same bodies at the door of the churches, and there only can they bless them and give them the last rites; and the offices and duties that are usually employed in such services are to be performed by the Religious themselves." The very nature of death, which is the end of all controversies, is never without controversy. Many similar cases have been presented in these ephemerides: *Acta*, Vol. XIII, page; *GLI IL*, as can be seen in Vol. I, page 85; Vol. V, page 124, 562, 598; Vol. VII, page 25; Vol. VIII, page 528; Vol. IX, page 20; Vol. XII, page 346.

[*Latin ed. p. 418*]

418 CONCERNING FUNERALS AND FEES. "These ought to be performed by the monks themselves, and not by the parish priests." From this arrangement, it seems to follow that a parish priest cannot perform any function in the churches of Religious Orders; and since it is his duty to accompany the bodies, reciting the prayers prescribed by the Ritual, up to the entrance, it also seems to follow that the churches should cede all fees pertaining to funerals to the Religious, except for the fourth part, according to the form of the law. Furthermore, it is forbidden for parish priests to

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demand from the heirs of the deceased, who have chosen to be buried in the churches of the Regulars, a greater fee than they could collect if the deceased had wished to be buried in the parish church or in any other secular church, as is derived from a decree which the Sacred Congregation of Rites and the Religious Council issued on December 7, 1672. "In order to abolish the undue exactions," which, as is proposed, are often made concerning the burial of the bodies of the deceased, it was decided that it should be ordered, as is stated in the tenor of this decree, that the Archbishop of Brindisi, and other local Ordinaries, should not permit parish priests, or other members of the secular clergy, to demand from the heirs of the deceased, who have chosen to be buried in the aforementioned churches of the Regulars, a greater alms than they could collect if the deceased had wished to be buried in the parish church or in the church of the secular clergy itself." On August 31, 1657, the same Sacred Congregation of Rites and the Religious Council also issued this decree: "Considering the matters explained above, and following other resolutions, it was decided that the functions pertaining to funerals over the bodies of the deceased, who have happened to be buried in the churches of the Regulars, after they have arrived at those same churches, belong to the Regulars and not to the parish priests, and therefore, this should be observed in the churches of the Oratories, as it is commanded and prescribed." Furthermore, the Sacred Roman Rota, in the Decision *De Magno*, 43rd December, 4858, number 3, states: "Moreover, the Fathers have confirmed the opinion concerning the faculty granted to the parish priests to perform all the sacred rites over the bodies of those who are exposed in the church of the Oratory. Since the performance of funeral rites implies jurisdiction, and since jurisdiction cannot be exercised in places and churches legally exempt, it necessarily follows that it cannot be admitted."

[*Latin ed. p. 419*]

FUNERARY RITES AND FEES: 4J9 > By the favor of the acting Parish Priests, the right to perform those sacred, funeral rites, in the Church of the Filippini, with an exemption dating back to the year 1723, was granted by Clement XI. Furthermore, there exists a perpetual jurisprudence which confirms the exclusive right of exempt churches to conduct funerals against Parish Priests, as noted by Barbosa de Offic, part 3, chapter 26, number 80; and by De Luca de Regni, discourse 1, number 53. This most important principle has been repeatedly affirmed by the Sacred Congregation, as can be seen in Forolivien. Iuris funer. of September 16, 1871: "Does the Church of Carmel still enjoy the right to perform funerals, so that, in accordance with its proper function, it may perform the funeral rites over the bodies of the deceased, even in the same place where they have a family tomb?" The answer is: "Affirmative." And in §, of the same document, it is read: "Churches which possessed the right to bury [the dead] do not now lose

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this right simply because they are located in a public cemetery, which certainly does not prevent them from receiving funeral fees and from performing the funeral rites over the bodies." And in the Siracusana funerum of February 24, 1872, the same Sacred Congregation states in §: "To all of this, if we add that it has been defined by this Holy Order that the erection of cemeteries has only materially and physically changed the place of burial, but not the right to bury, which therefore remains fully intact, the matter has reached the height of evidence."

RIGHTS OF PARISH PRIESTS: It should be noted that the sacred canons grant Parish Priests jurisdiction, and parochial rights over all those who die within the boundaries of the parish, Decret, cap. Fraternitatem de sepulturis; Barbosa de Offic, Parish Priest, part 3, chapter 26, number 66. And although these rights cannot be exercised by Parish Priests within a church or in a Regular monastery, nevertheless, when a body leaves that church or monastery, in order to be taken to the cemetery, the jurisdiction is revived within that territory, because of the easy return of each thing to its principles, or because the place governs the action, according to the legal maxim.

Regarding other doubts presented at the end, with Vecchiotti, recently deceased, in Instit. Can. Vol. 2, chapter 5, § 62, we will note: "Here a question arises which..."

[*Latin ed. p. 420*]

420 CONCERNING FUNERALS AND PRIVILEGES: "A doubt arises. It is asked whether Religious, after having performed the funeral office in their own church, are obliged to summon the Parish Priest of the church, within whose boundaries the monastery is located, so that he may accompany the body to the cemetery; or whether they can perform the funeral rites themselves, without the Rector. The Fathers of the Order of Preachers appealed to the Holy Congregation and proposed the following questions to be answered: 1. Is the Parish Priest of the metropolitan church to be called and is he obliged to be present, wearing his stole, in the solemn procession of the Religious to the public cemetery, in this case? 2. Is this funeral procession to be ordered and led under and before the metropolitan or parish cross, in this case? And, assuming affirmative answers to 1 and 2; 3. Is the Parish Priest to lay down his stole near the grave of the Religious, or rather, is he to complete the already begun office in this case, and assuming negative answers to 4 and 2; 4. Can the Religious, without the presence of the Parish Priest, order a procession with the stole and the conventual cross up to the grave, or rather, must both signs be laid down when passing through the parish, resuming afterwards in the cemetery, in this case? The Holy Congregation responded: "To 1 and 2, negatively, in all cases, provided that the body is carried without solemn pomp, by a direct route, to the cemetery by the family of the Religious of their own monastery only. To

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3, provision is made in the preceding statements. To 4, affirmatively to the first part, with the conditions as stated above, with only the stole and the conventual cross, negatively to the second part. From this decision, which concerns the funeral of a deceased Religious, it can be argued that the same should be affirmed absolutely regarding the funeral of a secular person, who has a tomb chosen by the Religious, or a pagan tomb. Hence, drawing an argument from this equality, it would seem that, since it is forbidden for the Parish Priest to enter the churches of the Religious with a cross and stole, this right should also be denied to the Religious; Pignatelli, Consult. Canonie, Vol. 3, canon 48, n. 49, n. 49. With these premises, it was left to the Most Reverend Fathers to decide what answer they should give to the following question..."

[*Latin ed. p. 421*]

FUNERALS AND FEES. 421 Questions.

I. Whether and to whom the right belongs to accompany the bodies of the deceased from the churches of Regular clergy, to whom they have been brought for the purpose of performing the funeral rites, to the common cemetery, where they must be buried.

II. Whether the parish priests have the right to receive the fees that are given by the heirs to the priests who accompany the bodies to the cemetery.

III. Whether the Religious [clergy] involved in the procession of the bodies, of which we are speaking, must invite the parish priest to accompany the deceased to the cemetery.

IV. Whether the Regular clergy may proceed with their stoles and the conventual cross up to the tomb, or whether they must lay aside both symbols when passing through the parishes, to be taken up again later in the cemetery?

RESOLUTION. The Sacred Congregation of Bishops and Regulars, after discussing the matter on September 17, 1880, decided to respond as follows:

To I: Affirmative, in favor of the Regular clergy.

To II: Negative.

To III: Negative.

To IV: Affirmative regarding the first part, negative regarding the second part, without pomp and without a hearse.

FROM WHICH WE GATHER:

I. From the law which ordered that bodies be buried in public cemeteries, it has not been declared null and void the right which the churches possess, both to perform funerals and to receive fees.

II. Hence, as we have indicated before, the erection of cemeteries has only materially changed the place of burial, while all the rights remain intact.

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III. Therefore, if, by civil law, the deposition of the body in the churches is prohibited, the funeral procession and the exposition [of the body] with the other customary acts remain unimpaired.

[*Latin ed. p. 422*]

422. FUNERALS AND FEES. IV. Public cemeteries have indeed been substituted for the burial grounds of individual churches; thus, churches that enjoy property rights can exercise them in the substituted cemeteries. V. Therefore, just as formerly, the jurisdiction of every parish priest over corpses ceased at the doors of the church of the Regular clergy, who possessed the right of burial, so too now, that same jurisdiction must cease, since nothing in the law has been changed. VI. And therefore, when the coffin is brought to the doors of the aforementioned church, and the final farewells are spoken, the parish priests cannot interfere in those ministrations that are to be performed afterward over the corpse. VII. Consequently, when corpses have passed into the jurisdiction of the Regular clergy, for the purpose of burial, all offices and duties, up to the public cemetery, belong to the Regular clergy; and the jurisdiction of the parish priests cannot revive. VIII. It must also be understood that fees are not due to the parish priests, which are given by the heirs accompanying the corpse to the cemetery, to the priest; and that the Regular clergy are not obliged to bring parish priests along for such corpses to the public cemeteries. IX. Religious who accompany corpses to the public cemetery may proceed, passing through the boundaries of the parish, with a stole and the customary cross, provided that they proceed without pomp and with due reverence.

FROM THE APOSTOLIC PENITENTIARY. The Holy Penitentiary renews and confirms, by order of the Most Holy Lord Pope Leo XIII, the following declarations, which have already been published on the occasion of the Jubilee of the year 1879, also for the Jubilee of the present year 1881. (1) I. The fast prescribed for this Jubilee can also be fulfilled during the time of Lent, provided that it is...

[*Latin ed. p. 423*]

DECLARATIONS. 423 days, besides those excepted in Apostolic Letters, shall be applied only for food to satisfy hunger, and the use of any food whatsoever is forbidden, with regard to the quality of food, by any grant or privilege, even those contained in the Bullae Cruciatae.

II. To the faithful who, with Chapters, Congregations, and Brotherhoods, or with their own parish priest or priest appointed by him, visit churches processionally in order to gain the Jubilee, the Indult granted in the same Apostolic Letters to these Chapters, Congregations, etc., can be applied by the Ordinaries.

III. One and the same Confession and Communion cannot satisfy the Paschal precept and simultaneously acquire the Jubilee.

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IV. The Jubilee, with regard to the plenary Indulgence, can be gained twice or more times by repeating the prescribed works twice or more; but only once, that is, only on the first occasion, with regard to the favors attached to the same Jubilee, namely, absolutions from censures and reserved cases, commutations, or dispensations.

V. Chapels and oratories can also be designated for the fulfillment of the prescribed visitations, provided that they are dedicated to public worship and that Mass is customarily celebrated in them.

VI. Visitations instituted to gain the Jubilee can, provided that they are made in the prescribed number, be carried out at the discretion of the faithful, either on one day or on several days.

VII. In this Jubilee also, without any exception, the resolutions of doubts published by the Most Holy Penitentiary for the Ordinaries of Italiae on June 11, 1869, shall hold place. Contrary provisions notwithstanding.

Given at Rome, in the Most Holy Penitentiary, on this 25th day of March, 1881.

A. CARD. BILIO, Penitentiary Major.

Hyp. Can. Palombi, Secretary of the Most Holy Penitentiary.

[*Latin ed. p. 424*]

424 FROM THE DECREE of the HOLY CONGREGATION OF RITES, concerning the canonization of the Blessed John Baptist of Conception, Founder of the Order of the Most Holy Trinity for the Redemption of Captives. CONCERNING THE DOUBT: "Whether it is established that Paschal Gasbarri was instantaneously and perfectly healed from pulmonary phthisis in the case and to the effect of which we are speaking." The clear path of the Lord's commandments, which leads to life, was followed by the Blessed John Baptist of Conception, who, from his earliest youth, with the grace of the Spirit of the Holy Place, happily progressed in the Order of the Most Holy Trinity for the Redemption of Captives. When the charity of Christ was constantly diffused in his heart, so that the life of Jesus might also be manifested in his body, he united the austerity of penance with innocence of life, and he undertook to restore stricter discipline and poverty among his brothers, and he instituted more rigorous observances in the monasteries. Thus was fulfilled what the Saint Teresa had foretold, having seen him in a vision: that he would be a saint and a distinguished father to his family. Therefore, after a most careful examination, according to the canonical constitutions, of the excellence of his virtues, and of the miracles worked by God through his intercession, the Venerable John Baptist was solemnly raised to the honor of Beatification by the decree of the Most Holy Pope Pius VII in the year 1819. And the Lord deigned to manifest his servant with new signs after the solemnities of his Beatification. Meanwhile, the Postulators proposed to the Sacred

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Congregation of Rites for consideration the healing obtained by Paschal Gasbarri, from the village of Saint Peter in the Diocese of Praenestina, in the month of June of the year 1854, through the intercession of the Blessed John Baptist. For he had long been afflicted with pulmonary phthisis, and had already been lamented by the physicians, but, as he was drawing near to death, having invoked the help of John Baptist, he was, as it were, snatched from the jaws of death, and was so perfectly healed that the very next day he eagerly returned to his field labor. Therefore, for the first time, this wondrous healing was brought to the attention of...

[*Latin ed. p. 425*]

DECREE 425. In a solemn assembly before the Most Reverend Cardinal Aloysius Billio, Bishop of Sabina, the Relator of the Cause, on the twelfth day before August in the year 1874, the matter of the miracle was then discussed. Subsequently, it was considered in the preparatory congregation before the Most Reverend Cardinals presiding over the Sacred Congregation of Rites, in the Vatican buildings, on the fourth day before March in the year 1879. Most recently, on the thirteenth day before April of the preceding year, in the general assembly of both the Most Reverend Cardinals presiding over the Sacred Rites, and of the Consultor Fathers, before the Most Holy Pope Leo XIII in the Apostolic Vatican Palace, the aforementioned Most Reverend Cardinal, Relator of the Cause, proposed the following question: "Does it appear certain that Paschalis Gasbarri was instantaneously and perfectly healed from pulmonary phthisis in the case and to the extent of which we are speaking?" "However, after the votes of both the Most Reverend Cardinals and the Consultor Fathers, the Most Holy Pope, for the sake of His wisdom, decided to postpone the Decree to another time, so that He might more thoroughly consider the matter Himself, and in the meantime, seek divine light. But, with more fervent prayers offered to God during these days, in which the grace of the Savior has been revealed to all men, He decided to announce His judgment on this solemn feast of the Circumcision of Our Lord Jesus Christ. After, therefore, having devoutly performed the divine mysteries in the private chapel, He entered the noble Vatican hall and, seated on the throne, having summoned the Most Reverend Cardinals Dominic Bartolini, Prefect of the Sacred Congregation of Rites, and Aloysius Billio, Bishop of Sabina and Relator of the Cause, as well as the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, and Myself, the undersigned Secretary, and with them present, He pronounced: "It is established that a miracle of the second order, wrought by God, through the intercession of the Blessed John Baptist de Conceptione, has been confirmed by the instantaneous and perfect healing of Paschalis Gasbarri from pulmonary phthisis." And He ordered that this Decree be placed in the records of the Sacred Congregation of Rites, and made public, on the first day of January in the year 1881.

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D. CARD. BARTOLINIUS, Prefect of the Sacred Congregation of Rites.

In place of the signatures, Placidus Ralli, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 426*]

426 APPENDIX VII IN WHICH MORE ARE PRESENTED FROM THE DECREES OF THE SACRED CONGREGATION OF RITES OF FRANCE. A priest of the Third Order of Saint Francis, who is not especially dedicated to the service of any particular church, may use the privilege of conforming to the Franciscan calendar for the recitation of the Divine Office and the celebration of Mass, according to the Decree of the Sacred Congregation of Rites of August 2, 1694; may he, concerning the Office and the celebration of Mass, observe the feast of the calendar of his Diocese, if this feast is of great devotion, for example, the Feast of All Saints, or the patronal feast of the Diocese or of the civil province, as is customary in the Diocese itself? The Sacred Congregation itself judged it fitting to respond: No, unless it concerns those feasts of the Diocese which are also prescribed to the Religious of the aforementioned Order of the Minor Saints of Francis, by the very tenor of special rubrics or decrees. And thus it responded on June 9, 1877. MAURIANEN. The Most Reverend Lord Michael Rosset, Bishop of Maurienne, humbly proposed the following questions to be resolved by the Sacred Congregation of Rites: QUESTION I. In the Diocese of Maurienne, as in almost all the Dioceses of France, the custom prevails of not (1) Do you have the decree in Volume XI, concerning the use of a godfather and godmother when the Sacrament of Confirmation is administered to adults? In truth, it would be introduced with difficulty and inconvenience the necessity of always using a godfather and godmother, since most Dioceses are very large, and Confirmation cannot be administered more frequently than every three years, or even every five years, or less frequently in each Parish: hence, those to be confirmed are very numerous. Is it permissible for the Bishop who asks the question to safely acquiesce to the ancient custom of not using a godfather or godmother? QUESTION II. It is also asked whether the aforementioned Bishop may permit the establishment in his Diocese of Confraternities, Altars, and Oratories, both public and private, under the name of Our Lady, commonly called of La Salette, expressly with that name? The Sacred Congregation of Rites, with reference to the aforementioned Secretary, judged it fitting to respond: To I. The petitioner should refer to the Sacred Universal Inquisition. To II. Affirmative; but in the approval of Confraternities under the title of the Blessed Virgin Mary, commonly called of La Salette, the condition expressed in the aforementioned Decree No. 5692, concerning Question III, must be observed. And

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thus it responded and ordered to be observed on July 7, 1877. (1). 509.

[*Latin ed. p. 427*]

IX. V. U. CASERTANA. Non multis abhinc annis, in the Diocese of Caserta, a question arose among the Parish Priests and Chaplains of Confraternities, which possess a public oratory separate from the parish church, concerning to whom it pertains to perform the funeral service over the bodies which are brought to the oratories of the Confraternities, namely, to the Parish Priest or to the Chaplain? The Parish Priests contend that such a service pertains to them, when the deceased is a subject of their parish, according to a Decree of the Sacred Congregation of Rites, issued in Rome and throughout the world on December 10, 1703, concerning the question: "Does the funeral service pertain to the Parish Priest over bodies in the public oratories of Confraternities?" It answered: "Affirmatively," when the deceased is a subject of the Parish Priest, within whose jurisdiction is the oratory. However, the Chaplains object with a Decree issued by the same Sacred Congregation of Rites in Mexico on September 3, 1746, in which it is stated that, if the body is brought to a church different from the parish church, the funeral service over the body of the deceased pertains to the Rector or Chaplain of that church, and not to the Parish Priest. After these matters were presented, the Most Reverend present Bishop of Caserta requested a solution to the following questions from the same Sacred Congregation of Rites: QUESTION I. Whether the first or the second Decree should be followed in this controversy, so that an end may be put to the dispute between the Parish Priests and the Chaplains of the Confraternities? QUESTION II. Whether, under the name of "Church," the public oratories of the Confraternities are also included, as in the second Decree? The aforementioned Sacred Congregation, with the reference of the undersigned Secretary, after hearing the opinion in writing of another of the Masters of the Apostolic Ceremonies, decided to respond as follows: To QUESTION I: Adhere to the Decree of December 10, 1703. To QUESTION II: As provided in the first. And thus it responded and ordered it to be observed on July 7, 1877. TREVES. The Most Reverend Lord, John James Idrast, Auxiliary Bishop of Castoria, in Treves, presented to His Holiness Pope Pius IX the following: All the Canons and Vicars, with the exception of two, are already advanced in age, so that few are able to sing the conventual Mass, while four are so afflicted with infirmities that they are unable even to celebrate Mass. Since the Orator, who also performs the duties of a Canon, is, according to the Provincial Council of Cologne in the year 1860, obligated to appoint someone to take his place for the sung Mass and Vespers, which are assigned to him according to the order or schedule in his week, which, due to the aforementioned circumstances, is scarcely possible, and since these difficulties increase from day to day, because modern laws prevent the replacement of deceased or sick Canons

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and Vicars; therefore, His Holiness...

[*Latin ed. p. 428*]

428 APPENDIX VII. Our Lord, at the urgent request of the Most Reverend Archbishop of Cologne, implored that permission be graciously granted to him to celebrate these sung Masses and Vespers. Furthermore, the Sacred Congregation of Rites, having heard the report presented by the undersigned Secretary, has responded and affirmed: Considering the existing and enduring circumstances, in the absence of a canonically appointed priest to serve the altar for which he is bound, he shall appoint someone from among the beneficiaries or another from Glaris. And thus, it responded and granted an indulgence on July 7, 1877. (1) OF THE SOCIETY OF PRIESTS OF THE MOST HOLY SACRAMENT. The current Superior General of the Congregation of Priests of the Most Holy Sacrament, following the example of the Sacred Congregation of Rites, proposed the following questions to be resolved:

QUESTION I. Is it permissible to add the Commemoration of the Most Holy Sacrament in private Masses celebrated in churches where the Most Holy Sacrament remains exposed? Or must this Commemoration be entirely omitted on the feasts of Our Lord Jesus Christ, for example, in Masses of the Mysteries of the Passion, on the Sixth Day of Lent, during the Octave of Easter, of the Ascension, of the Transfiguration, etc.?

QUESTION II. In some places, the following words are sung before the Most Holy Sacrament: "Let us adore the Most Holy Sacrament forever." Can such usage be maintained, given that the meaning of these words does not appear entirely clear and may perhaps be quite improper?

QUESTION III. The feast of the anniversary of the Dedication of the Most Holy Savior, occurring on November 9th, is celebrated, by the gracious concession of the Holy See, in the aforementioned Congregation under the rite of a Double of the First Class with an Octave. The question is raised: When this feast coincides with the anniversary of the dedication of the Cathedral Church, should the latter feast be transferred, or rather omitted? And if it is to be transferred, should it take precedence over the feast of St. Andrew, whose office is transferred in such a case, by reason of the First Sunday of Advent?

QUESTION IV. Is it permissible for the members of the aforementioned Society to hear confessions in the sacred tribunal, wearing only a stole of violet color, but without a surplice?

QUESTION V. Should they walk in public processions immediately before the secular clergy and after the Regular Orders, for example, the Orders of St. Francis and St. Dominic, or before them?

QUESTION VI. In a private Mass celebrated near the altar, where the Most Holy Sacrament is exposed, must the priest, as held by the Reverend

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Gardellini, kneel on both knees each time he passes, within the Mass, before the middle of the altar, especially when he transfers the book before the Gospel, and after the sacred oblations?

The aforementioned Sacred Congregation, with the Secretary present, having heard the written opinion of another of the Masters of the Sacred Ceremonies, after mature deliberation and consideration, decided to respond to the proposed questions: (1) Which follows the decree found in Vol. XI, page 575.

[*Latin ed. p. 429*]

x vii. Regarding I. It is possible to perform it according to other decrees, provided that the Mass is not celebrated in the same mystery. Regarding II. It can be retained. Regarding III. Provided that the priests of the Society of the Most Holy Sacrament residing in the Episcopal City do not have a consecrated church, the affirmative applies to the first part, with the provision in the first; regarding the third, the rules of translation must be observed. Regarding IV. The Roman Ritual must be observed in the church. Regarding V. Affirmative for the first part, to the extent that they participate in public processions wearing the zucchetto and clerical biretta, with the provision in the first part applying to the rest. Regarding VI. Both upon entrance and exit, on both knees; within the Mass, on one knee. And thus it was written and ordered to be observed on July 7, 1877. NEW YORK. The director of certain Catholic periodicals printed in New York requested that the Holy Congregation of Rites declare whether it is permitted to add a version in the vernacular language to the Latin text of the Order of Mass, especially the Canon, in the aforementioned books. The Holy Congregation of Rites, after consideration by the undersigned Secretary, and having heard the opinion of the Reverend Father Lawrence Salvati, Promoter of the Faith, decided to declare: The books and their vernacular versions, of which we are speaking, are entirely subject to the authority of the Bishops, according to canonical prescriptions and Apostolic Decrees; therefore, it is not permitted for the faithful to use these editions unless they bear the explicit approval of the Bishops. And thus it was declared on August 4, 1877. ORDER OF PRÉMONTRÉ. Joseph Willestren, Abbot, and the entire community of the Monastery of Mont Dieu of the Order of Prémontré in the Diocese of Bayeux in France, humbly state that, by virtue of the statutes of their Order, they are bound, within the choir, to recite the Office for the Dead on November 2nd, as well as to recite the litanies on the feast of St. Mark and during the Rogation Days. However, these same statutes are silent regarding the private recitation by those who are outside the monastery. Therefore, the question is asked, in order to alleviate anxieties, whether they are bound by any other obligation to commit a sin through such private recitation? The Holy Congregation of Rites, after consideration by the undersigned Secretary, has replied: Affirmative, that is, they

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are bound as those who are obligated to recite the canonical hours. And thus it was declared on August 4, 1877. GENEVA. The Reverend Joseph Andrew Broquet, Rector or Vice-Parish Priest in the City of Geneva, with the permission of his Most Reverend Diocesan Ordinary, reported to the Holy Congregation of Rites that the parish church under the title of St. Germanus of Auxerre had been usurped and profaned by the new heretics, whom they call liberal Catholics, and that the parish seat had been...

[*Latin ed. p. 430*]

430 APPENDIX VII. This [parish] was recently transferred to another Church, newly erected and only blessed, but not consecrated, under the title of the Most Sacred Heart of Jesus, from which place the following request was urgently made: I. Whether the Feast of the Most Sacred Heart of Jesus should be celebrated under the rite of the first class with an Octave, as a titular feast? II. Whether the Feast of Saint Germanus should still be observed under the rite of the first class with an Octave? III. Whether suffrage should be offered for both titles? IV. Who should be mentioned in the prayer: All? Or rather, should mention be made of the patron of the place, since the Church is not consecrated? And, since the answer to the second question was affirmative, the same petitioner earnestly requested that the Feast of Saint Germanus, which for many years has been celebrated on the Sunday following, due to a false interpretation of an indulgence granted by Cardinal Caprara for the reduction of feasts, be permitted to be celebrated as before, namely with a sung Mass of Saint Germanus on the Sunday following, even though Saint Germanus is only the titular saint of the Church, and not the patron of the place. The Sacred Congregation of Rites, having heard the report of the undersigned Secretary, and after mature deliberation, declared that, in this case, using the faculties specially granted to it by His Holiness Pope Pius IX, it granted an indulgence so that, with regard to the Divine Office, nothing should be changed in the meantime; without, however, excluding the titular saint of the new Church, concerning whom everything should be done according to the rubrics, considering the titular saints of Churches. And thus it responded on August 11, 1877. The Priest Joseph Frattini, of Venice, belonging to the Congregation of the Oratory of Venice, and modern Prefect of Ceremonies in the Church of that Congregation, humbly proposed the following questions to the Sacred Congregation of Rites for a suitable declaration: In the administration of the Holy Eucharist outside of Mass, the Ritual of Rome prescribes a stole of a color appropriate to the Office of that day. The question is whether the stole of the color of the Office or of the Mass should be used: 1. On the fifth day of the Greater Week; 2. On the Vigils and feasts of the Four Seasons, or on the second day of Rogations, (or on the feasts of Lent where Octaves are granted) which occur within a non-privileged Octave, if, according to the rubrics of the Roman Breviary and Missal, the Office of the

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Octave and the Mass of the Vigil or Feast are celebrated? The same Sacred Congregation, having heard the report of the undersigned Secretary, and having considered the written opinion of another of the Masters of the Apostolic Ceremonies, decided to respond as follows: In both cases, the rubric of the Roman Ritual should be observed, and where the custom of administering the Holy Eucharist with white stoles to the faithful fulfilling the Paschal precept prevails, it should be tolerated. And thus it responded on August 11, 1877. SORANA, Reverend Father, the Priest James Orlandi, Abbot Parochial of the Church of Saint John.

[*Latin ed. p. 431*]

431. Hence, the Moderators of the very Archconfraternity petitioned the Sacred Congregation of Rites to declare whether precedence in ecclesiastical functions should be granted to them over other confraternities, with the exception of the Confraternity of the Most Holy Body of Christ. When these petitions were presented to the Sacred Congregation of Rites through the undersigned Secretary, the Sacred Congregation, having heard the opinion of the Most Reverend Bishop of Abellinum, declared that precedence should be granted to the Archconfraternity of the Blessed Virgin of Carmel over all other Archconfraternities, if any should be created after it, and over all confraternities, with the exception of the Confraternity of the Most Holy Body of Christ. And thus it declared and ordered to be observed on August 18, 1877. It was stated that the confraternity, named after Saint John the Baptist and the Evangelist, located in the town of Gallinara within the boundaries of Your Eminence's diocese, requested that, as Your Eminence is already aware, an image of the Blessed Virgin of Loreto be publicly displayed for the satisfaction of the devotion and pious desire of their parishioners, replacing the tablet that represents the souls in Purgatory. The patron of the chapel gave his consent to the change, provided that the title of Purgatory is not changed, and that emblems suitable for signifying the title of Purgatory are placed around the statue. Furthermore, the Sacred Congregation of Rites, having heard the opinion of Your Eminence regarding the information and request made, and having heard the opinion of the Promoter of the Holy Faith, deemed it appropriate to inform Your Eminence: In the case in question, a special Apostolic permission is not required, and nothing prevents the image of the Mother of God from being displayed above the altar, provided that care is taken to ensure that nothing inappropriate is present. Rome, August 11, 1877. To the Most Reverend Lord, as Brother Bishop of Aquinatum, Pons, and Sorano. ABELLINUM. The Archconfraternity of the Blessed Virgin of Carmel in the town, commonly called Monteforte, within the boundaries of the Diocese of Abellinum, was elevated to the rights and honors of an Archconfraternity by the Most Holy Pope Pius IX in the preceding year. However, other confraternities existing there are unwilling to recognize its rights, and therefore, they deny precedence.

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PADUA. By Decree of the Sacred Congregation of Rites of November 24, 1837, Pope Gregory XVI graciously granted the request of the Rector of the Church of Saint Nicholas in the city of Padua, that the feast of Saint Constantine of Ancona be celebrated in that church on September 23rd, according to the minor double rite, to be observed strictly by the priests of that church. However, since the pious association, commonly called the "dei Santesi," canonically established in the aforementioned church by another decree of the same Sacred Congregation of March 1, 1866, obtained from the Most Holy Pope Pius IX the permission to transfer the feast of Saint Constantine from September 23rd to any weekday within the Octave, the priests...

[*Latin ed. p. 432*]

432 APPENDIX VII. Those devoted to the service of the Church, having presented the following questions to the aforementioned Sacred Congregation for a suitable resolution, namely: it was published. (1) And thus it was replied and ordered to be observed on August 18, 1877. AQUEN. QUESTION I. Does the Decree include, besides the celebration of the Mass, the recitation of the Office, for priests devoted to the service of the Church? QUESTION II. And if so, whether September 23rd is a day of rest for those same priests, so that they should follow the Diocesan Calendar, and thus fulfill the Office of St. Thecla, for which, however, according to the force of the previous Decree, the third of October had been assigned? QUESTION III. Are only the Parish Priest and Curate considered to be strictly devoted to the service of the Church, or also two Assistant Curates, who, although they have the obligation to assist the Parish Priest in the care of souls, are also bound to fulfill the Office for two churches? The Sacred Congregation itself, after hearing the report of the undersigned Secretary, and after having heard the Reverend Father Promoter of the Faith, having duly considered all matters, replied as follows: To I. Affirmative. To II. Affirmative. To III. Affirmative; and let the Decree be given in Oveten. The General Vicar of the Most Reverend Archbishop of Aquen proposed the following questions to the Sacred Congregation of Rites for a suitable resolution, namely: QUESTION I. In the consecration of a church, does the Bishop who celebrates Mass at the altar wear all the pontifical vestments (or, as is understood, not excluding the sandals, the stole, etc.), and is it required that he wear all of these even if he celebrates Mass without singing, as is the custom in the conferring of Orders without singing? QUESTION II. And in the affirmative case, is the same procedure to be followed in the consecration of the altar, which is done without the consecration of the church? Therefore, the Sacred Congregation of Rites, after the report of the undersigned Secretary, and after a careful opinion from another of the Masters of the Ceremonies of the Apostolic See, decided to reply to the proposed questions as follows: To I. Negative. To II. Provided for in the

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first. And thus it was replied and ordered to be observed on December 15, 1877. (1) We will give the aforementioned Decree cited in Oveten in the next appendix.

[*Latin ed. p. 433*]

433 LETTERS in the form of a Brief from His Holiness Pope Leo XIII, in which the faculties already granted to the Ordinaries of the Austrian Empire concerning the alienation of ecclesiastical goods are reiterated.

LEO, POPE XIII, for the perpetual memory of the matter:

That, for the more expeditious handling of certain affairs for the benefit of the Church within the Austrian Empire, the authority of the Holy See Apostolic might intervene, through Ourself and through the Nuncio of the same Holy See presently at the Imperial court in Vienna, or through one holding the office of that Nuncio, Our Predecessor of blessed memory, Pope Pius IX, deemed it necessary to grant the aforementioned faculties for a limited period of time.

Now, since the time limit of the last such grant has now elapsed, We have been petitioned by certain Sacred Dignitaries of the aforementioned Empire, to extend those same faculties for another period, or to grant them anew. Therefore, approving of these requests, We grant to the Apostolic Nuncio who is presently at the Imperial court in Vienna, or to one holding the office of that Nuncio, as well as to the Archbishops, Bishops, and Prelates of no diocese, who are contained within the entire territory of the Austrian Empire, with the exception of goods, if any, located in the Italian provinces, and also to the Bishop of Wratislavia for the portion of the diocese that is within the Austrian Empire, the power to grant the following faculties for a period of ten years from now.

I. To the Archbishops, the faculty of alienating ecclesiastical goods up to the sum of eight thousand florins of Austrian currency; to the Bishops and Prelates of no diocese, up to the sum of six thousand florins of the same currency, whether these goods are stable properties or consist of public securities, with the condition, however, that the price received from the alienation be converted into the acquisition of other stable properties or annuities, and if those are lacking, that the price itself be invested in another manner fruitfully and securely, excluding any negotiation that is prohibited by the sanction of the sacred Canons to ecclesiastical men.

II. To the Archbishops, the faculty of imposing charges on ecclesiastical goods that do not exceed the sum of fifteen thousand florins; to the Bishops and Prelates of no diocese, the same.

[*Latin ed. p. 434*]

434. Letters are granted, allowing the possibility of granting [loans], provided that the burdens exceed the sum of twelve thousand florins, but with a predetermined rate and term, by which the alien debt contracted for a

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pious cause shall be dissolved. If necessary renovations and improvements occur in some ecclesiastical property, and it is not possible to contract an alien debt, and provision for the necessity can only be made by the sale of some ecclesiastical property, in this case, the power to complete the sale is granted, with the condition that if any sum remains from the price received, the same shall be profitably invested according to the reasons explained above. Furthermore, although canon law, in the chapter entitled "Terrulas," grants the power to alienate properties of small value, and we do not intend to introduce any changes to these legal rules by these Letters, yet, for particular reasons that move Our mind, and without intending to set a precedent for any similar concession, We grant the power to impose burdens on ecclesiastical properties, provided that these burdens do not exceed the sum of one thousand florins. We do not intend that the powers described above, both in the present and in the preceding article, apply to properties belonging to Archbishops, Bishops, and other prelates of any diocese. Therefore, when dealing with these same properties in the cases described above, the suffragan Bishops shall, respectively, petition the Archbishops, and the Archbishops and the Bishop of Wratislavia, who are immediately subject to Us and to the Holy See, as well as prelates of any diocese, shall present their petitions to the Apostolic Nuncio, to whom We grant the power requested, as to the Archbishops, if they judge it expedient in the Lord. III. While maintaining the customary powers of Bishops and pious causes for entering into leases and contracts for a period of three years, the power is granted to enter into such leases and contracts for a period of fifteen years, with the other prescriptions of the sacred canons remaining in force. In order to avoid certain abuses, and to comply in some way with the custom that prevailed in the Austrian Empire, whereby the owners of ecclesiastical properties received the revenue or payments from the respective lessees in advance, the power is granted to receive such revenues or payments in advance, provided that, with regard to urban properties, they do not exceed the sum that is due from the lessee in a six-month period; and with regard to rural properties, provided that they do not exceed the sum that is to be paid by the lessee over the course of a year. IV. In cases of urgent necessity and for the benefit of a pious cause, in which it is necessary to proceed without delay to the alienation or imposition of burdens, the power is granted to the Archbishops to authorize the alienation.

[*Latin ed. p. 435*]

Letters 435 are to be completed, or loans of foreign currency are to be contracted, up to a maximum of sixteen thousand florins, and the same is to be granted to Bishops and Ordinaries of any Diocese, but not exceeding a sum of twelve thousand florins. In the cases expressly mentioned above, when it concerns goods pertaining to the tables of Archbishops, Bishops, and Ordinaries of any Diocese, the suffragan Bishops shall present

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their requests to their respective Archbishops; the Archbishops, and the Bishop of "Wratislavia," immediately subject to the Apostolic See, and the Ordinaries of any Diocese, shall present their requests to the Apostolic Nuncio, to whom We hereby grant the power requested, so that both the Nuncio and the Archbishops may grant the requested permission, if they judge it expedient in the Lord. We also wish that this same procedure be followed in cases where necessity does not press, and when it concerns alienations or burdens exceeding the aforementioned sums. Nevertheless, in all and each cases, We wish that the power to present requests directly to the Holy See remains fully intact. Furthermore, We wish that in such concessions, the canonical prescriptions be strictly observed, and in particular, the blessed and renewed Constitution of our predecessor Paul II, which begins "Cum in omnibus," issued on May 11, 1545, and therefore, in all and each powers granted by the Apostolic Nuncio, whether exercised immediately by him, or delegated to sacred Ordinaries, as has been established above, We wish and command that the necessity or utility of the pious cause be clearly demonstrated and proven, for which purpose, in each case, those concerned, as well as men of honest reputation and proven judgment, shall be consulted beforehand. Finally, We command that in all and each acts of sale or alienation, and also of lease for up to fifteen years, express mention be made of the permission granted by the Apostolic See. We wish and grant this, notwithstanding the blessed and renewed regulations of Paul II and other predecessors of Ours concerning ecclesiastical goods not to be alienated, and other Constitutions, especially those worthy of special mention, which may seem to be contrary, notwithstanding. Given at Rome, at St. Peter's, under the Fisherman's ring, on the 14th day of May, 1880, in the third year of Our pontificate. TH. Card. MERTEL.

[*Latin ed. p. 436*]

436 FROM THE SACRED CONGREGATION OF THE COUNCIL, TRANSACTION OF JULY 26, 1879, THROUGH A SUMMARY OF PRAYERS. The parish priest B. and the brothers Gorresio, with humble offering, presented a book explaining that the pious priest Michael Anthony, in the year 1748, canonically founded a simple benefice in the Church dedicated to the Blessed Virgin Mary. The right of patronage, both active and passive, of this benefice was reserved in favor of the descendants of the family Clerico; upon the extinction of that family, it was decreed that the right of nomination should belong to the Prior Syndic and the older counselor of that land. However, the obligations with which the benefice is burdened are reduced to residence, the celebration of daily Mass, as well as the obligation of celebrating two Masses on his anniversary, and of receiving the sacramental confessions of both parents, of teaching catechism, of visiting the sick residing in the hospice, of reciting pious prayers, and finally, of distributing each year a certain quantity of

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cloth for the relief of the poor. Upon the death of the beneficiary in the year 1803, the benefice passed to the family Gorresio, perhaps by force of the laws of the Gallic government, which at that time governed Pedemonte. When the family Gorresio became poor, they obtained an indulgence from the Apostolic See, by which the aforementioned obligations were reduced to them, and they were granted the faculty of retaining the endowment of the benefice in administration, for the life of the mother and brothers Gorresio, under the condition that they renounce any right over the lands of the benefice, which was done. It should also be known that the predecessor of the aforementioned parish priest was an orator.

[*Latin ed. p. 437*]

In the year 1833, for the protection of the obligations, a mortgage was recorded on the lands constituting the endowment of the Benefice, for the sum of 12,000 livres. This mortgage was always, during its validity, renewed, and for the last time on July 17, 1876, when the assets constituting the Benefice endowment were largely alienated by the brothers Gorresio and were in the possession of third parties. In this situation, the brothers Gorresio, in May 1876, brought the Parish Priest before the civil court, in order to compel him, at their expense, to cancel the mortgage, which they claimed was improperly recorded. The Parish Priest, on the contrary, vigorously opposed the claims of the brothers Gorresio, and also brought a suit against them, requesting that the court declare them obligated to fulfill the obligations of the Benefice, and that, if they failed to do so, the Parish Priest would, at their expense, take steps to fulfill those obligations. The matter stood thus when an agreement was reached, which stipulated: 1. that the brothers Gorresio would cede to the parish church the sum of 200 livres, to be recorded in the public debt register of the State. 2. That, in consideration of this, the Parish Priest would allow the mortgage to be cancelled. 3. That the parish church would assume the obligation of reciting two Masses each month, for the soul of the founder of the Benefice; and of providing, from the remaining income, for the sacred Oratory, especially during Lent or during the month of May, dedicated to the Blessed Virgin Mary.

WHAT IS OPPOSED TO THIS AGREEMENT?

The approval of the proposed agreement is opposed by: 1. the will of the testator, who forbade the alienation of these assets under any pretext; and the founder's intentions, which have the force of law, solemnly proclaim that they must be observed and not destroyed, as stated in Canon 13, question 2, paragraph 1, of the Code of Sacred Canons. 2. The lack of a valid basis for the agreement, which can only be made regarding uncertain and doubtful matters, as is required; for if it is made regarding a certain matter, it is null and void by law, as stated in Article 1 of the law on agreements, and

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Article 11 of the same Code. Indeed, it is certain, and the brothers Gorresio themselves readily admit, that they are bound to fulfill the real obligations attached to the Benefice.

[*Latin ed. p. 438*]

438. Regarding a transaction concerning a cleric, whose patrons are themselves involved. Furthermore, it is certain that a firm and legally valid mortgage exists, which has been registered since the year 1833 and is regularly renewed according to the civil laws pertaining to assets constituting the endowment of the benefice. This is all the more so because Apostolic approval is generally granted only when there is a just reason for a compromise, or at least a clear benefit to the Urceolus [presumably a person or entity]. *de trans. q. 23 n. 2 seq.* And while the Church may remit something, something must also be gained; lest it happen that only detriment accrues to the Church, while all the benefit is sought for the opposing party. *s. Cong. in Benevent. Beneplaciti 24 Ian. 1829.* This is deduced from the very nature of the transaction, which requires that something be remitted from both sides, according to Law 38 of the Civil Code concerning transactions. However, this is not at all the case in this matter. The Brothers Gorresio asserted that the Church would suffer all the loss from this transaction. Moreover, the obligations of Masses would have to be reduced, which could easily disappear in the future, while the uncertainty of the funds, commonly called the "Consolidato," affects no one. Therefore, the benefice for the cleric, which was established on immovable property, yielding abundant and certain income, would be founded on assets yielding a meager and uncertain income through this agreement.

THINGS FAVORABLE TO THE TRANSACTION. On the other hand, it must be considered that: 1. This transaction, if examined more closely, establishes conditions that are highly in accordance with the intentions of the founder and testator. The testator intended two things: the suffrage of his soul and the instruction of the faithful. Indeed, both are provided for in the proposed transaction: the suffrage of the testator's soul through the celebration of Masses, and the instruction of the faithful through preaching. 2. The transaction is now very opportune, and all the required conditions for its proper and legitimate execution are met. Certainly, the matter at hand is doubtful. Although the benefice has certain real obligations attached to it, and the parish priest rightly believes that the aforementioned mortgage is firm and has full legal value, nevertheless, the matter is now in question and is under dispute. The parish priest himself has shown his anxiety, calling this dispute long, expensive, and of uncertain outcome.

[*Latin ed. p. 439*]

TRANSACTION 439. Indeed, the outcome of lawsuits is always uncer-

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tain, and even more uncertain is the prospect when the case concerns ecclesiastical goods, given the nature of our times. Furthermore, a transaction, which is made concerning a matter of great uncertainty; which puts an end to lawsuits and avoids serious expenses, is legitimately made and should be considered just and useful, as established in law 4 of the Code on transactions, in the section on causes, Code ibid., title, law in summa ff. §. 44, ff. on conditions, as Rocca argues, select. cap. S, no. 68. The Rota in Recent, decisions, 48, no. 24, volume S, and the Sacred Congregation in Fermo, transaction, May 4, 1794, in the other Fermo, Concord, November 24, 1807, and in Montis Alti, transaction, February 20, 1808. Moreover, in this transaction, something is verified from here and there. On the one hand, the brothers Gorresio renounce the risk of judgment and certainly pay the consolidated *syngrapha*, which yields 200 *libellae* annually; on the other hand, the Church acquires a certain property, by which it can better fulfill the will of the testator. To all this is added that all those who have an interest agree to this transaction; moreover, the Ordinary approves it, noting: that in no other way can the needs of the patrons, the fulfillment of the pious founder's will, and the spiritual benefit of the faithful be considered, given the circumstances and the times. Having considered both sides, the matter was referred to the judgment of the Most Eminent Fathers. RESOLUTION. The Sacred Congregation, after discussion, on July 26, 1879, decided to respond: Considering the circumstances and the vote of the Bishop, the transaction is to be approved, with the understanding that it is made with the Most Holy. FROM WHICH YOU CAN GATHER: I. That a transaction, strictly speaking, signifies only that agreement by which a doubtful and controversial matter is settled, with the consent of the parties, by something given or promised, retained or remitted. II. That the same authors define it as a non-gratuitous agreement concerning a doubtful and controversial matter, or a lawsuit that is uncertain and not yet defined. III. Therefore, the substantial form of a transaction is that something is given or done in exchange for the remission of the lawsuit; which, however, must be...

[*Latin ed. p. 440*]

440. A TRANSACTION is valid as long as the outcome of the dispute is uncertain, but not once the judgment has become final. IV. The required conditions must accompany the transaction in the matter; because the matter is doubtful and has been brought into question; and because the outcome must be considered uncertain, and because something has been relinquished by both parties, or from one side or the other. V. The Apostolic See appears to have approved this transaction, with the intention, considering the circumstances of the time, to somehow provide for the needs of the patrons and the will of the founder. REMOVAL OF AN OBSTACLE. March 20, 1880. SUMMARY OF THE FACTS. Alfred, perceiving his father's

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opposition to the aforementioned marriage, departed with Paulina. They traveled to Catania, where, surrounded by scandalous and immoral individuals, they gave their consent before an extra-diocesan priest. However, when the truth was learned by the Most Reverend Archbishop of that place, he immediately imposed the penalty of suspension on the priest, and he wished to inform the young people of the nullity of the marriage contract. Therefore, both returned to their homeland, in order, through the channels of the holy canons, to be able to enter into the desired marriage. However, Alfred learned that his father, since March 14th of that year, had interposed an impediment before the Curia, due to the great disparity in age between the parties, the incapacity of Alfred to give his consent due to mental weakness, and his inability to bear the serious obligations of marriage, because he was destitute in family matters. Therefore, Alfred immediately insisted that the prohibition be revoked, presenting a document from a physician, in which it was declared that he was capable of enjoying all civil rights. Therefore, the controversy was brought before the Curia, in favor of Al-

[*Latin ed. p. 441*]

441. An impediment to the dispensation. Alphred, who had been declared capable of contracting marriage, was separated from the woman. The father, deeply grieved by this decision, immediately declared his intention to appeal to the Holy Congregation. Alphred also petitioned the same Holy Congregation, requesting that the declaration made by his father be declared null and void. The Bishop, when questioned about the matter, responded that he approved of the medical opinion, which declared Alphred to be capable of all rights. He also stated that the father's objections were to be considered insignificant, as they lacked any valid basis. The objection based on age does not seem to be relevant; it should be known that the family of this girl is engaged in commerce, just like the family of Alphred. *Disceptatio Syiaoptic* JURA ALPHREDI. Therefore, the defender of Alphred demands confirmation of the judgment, both because the Holy Canons do not require the consent of the parents in the marriages of children, and because the father's dissent in the present controversy is unjust and unreasonable. First of all, to demonstrate this, he recalls that, according to the common opinion of Doctors, the advice or consent of the parents is not required for the validity of betrothals (Reiff. Ius can. lib. 4 tit. I §. I num. 24); therefore, all the more, it is not required for a marriage to be contracted, as D. Thomas teaches in 2-2 q. 114 art. 5 that neither servants are bound to obey their lords, nor children their parents, concerning the contracting of marriage, or the observance of chastity, or anything of that kind. For as soon as someone reaches the age of puberty, they are no longer under the power of another, if they are of free condition, with regard to matters concerning their person; and therefore, even against the will of their parents, they can enter into marriage or embrace religion, as the same

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Holy Doctor resolves in 4 sent. dist. 38 q. I art. I §. 3 ad 2, and dist. 28 art. 3 ad 1. Adhering to these principles, the Council of Trident, in chapter I of session 24 concerning the reform of marriage, anathematizes those who assert that marriages contracted by children without the consent of their parents are invalid, and that parents make such marriages valid or invalid.

[*Latin ed. p. 442*]

442. An impediment to marriage can be removed, and the Sacred Congregation has granted the faculty to dispense with impediments, even if the mother, brother, or other blood relatives are involved, as can be seen in Florentina on January 12, 1726. However, the physician declared Alphred to be capable and able to enjoy his civil rights; and it is also evident from the record of his birth that he has passed the age of puberty. Since he is therefore found to be in such a condition that, with regard to matters pertaining to his person, he is not prohibited by the consent of his father from entering into marriage, the court concludes that its judgment, being in accordance with law and practice, should be confirmed. Moreover, the dissent of the father is unjust and vexatious, and therefore, as the Gloss states in the final chapter, under the words "malitiose de desponsat. impub.," it imports deceit and calumny. The circumstances, he says, indicate that this is the case, as evidenced by the objections raised by the father. For the father claims that the son is lacking in intellectual abilities, while Doctor Adami, who had previously been consulted on this matter, contradicts this, and this is confirmed by the witness Anthony from the household of Pretivius. Furthermore, he adds that the witnesses who were brought forward by the father to prove the contrary were themselves found to be under his dependence, although they were established as credible. The father also objects to the lack of means for the son to support himself. But, as in the past, so in the future, the son can apply himself to his profession, from which he was dismissed by the father because of this marriage. Furthermore, Alphred, now 24 years of age, will be able to acquire the necessities of life through industry and his own labor. Finally, the wickedness of the girl's morals and the disparity of condition, which are also alleged, should be considered. The parish priest and several trustworthy witnesses testify that the girl is endowed with excellent morals. Therefore, since neither the disparity of condition, nor the immorality of the girl, nor the lack of intelligence in Alphred, are verified, the court concludes that although the consent of the parents may be required for entering into marriage, nevertheless, where this consent is unreasonable and vexatious, as in this case, it should be disregarded, and therefore the judgment of the court, being based on justice, should be confirmed by the Sacred Congregation.

[*Latin ed. p. 443*]

REMOVAL OF OBSTACLES 443. THE FATHER'S RIGHTS. On behalf of

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the defense, a masterful opinion is presented by Ferdinand de Valentibus, formerly a fiscal advocate of the Holy Consistory and of the Royal Court of Appeals, as found in his *Works*, Volume III, section V, concerning ecclesiastical matters. In this passage, the author affirms that, especially since the Council of Trent, the consent of the parents is not necessary for the validity of the sacrament in the marriages of their children; however, the father still retains the right, as before, to prevent the marriage of his son for just reasons. Therefore, the Church, the parish priest, and even the ecclesiastical judges themselves must strive with all their might to prevent such marriages from being celebrated against the will of the parents, due to the innumerable evils that result for society; and if the matter is brought before a court, with numerous laws and precedents presented, it should always be postponed, so that the son may, at some point, come to his senses. This, the aforementioned de Valentibus testifies, having happily experienced it in a case before this Holy Congregation, for which he wrote in the year 1713, stating at the end of his argument, that regarding the question – "Is there a place for the celebration of a marriage?" – the Holy Congregation of the Council always postponed the resolution of this case, and the marriage was not consummated. Therefore, the defender also urges the postponement of this case, as more serious and weighty reasons than those of Ferdinand de Valentibus seem to suggest. In the case of the year 1713, a father of noble lineage was preventing his son from marrying for reasons that were unbecoming to him, because the son wished to marry Faustina Iacobi, who, by renting out houses, earned her living, as a *hospita*, although she was of good character. Here, besides the ambiguity of the woman's life and the retention of a lover, for several months, in her own home, by the woman's parents, who had fled from the father's home, there is also a disparity in birth and age: both lack the necessary qualities for a happy life; and the groom himself suffers from a mental defect, so that he is unable to provide for his sustenance by any means. He was also forbidden by the Civil Tribunal of the island due to his mental defect, and the value of his assets was ascertained through witnesses examined before the court.

[*Latin ed. p. 444*]

444. OBSTACLE TO REMOVAL. After both matters had been thoroughly considered, the Most Eminent Fathers decided to determine by what response the doubt should be resolved, namely, whether the opinion of the Congregation should be confirmed or rejected in this case. RESOLUTION. After deliberation, the Holy Congregation, on March 20, 1881, decided to respond: "The opinion is to be confirmed." FROM THE FOREGOING, THE FOLLOWING ARE GATHERED: I. From the Divine Thomas, it is not held that servants are obligated to obey their lords, nor children their parents, regarding the contracting of marriage or the observance of chastity, when they have reached the age of puberty. II. Hence, from the authority of the

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same Doctor, it is possible for anyone to enter into marriage or to embrace religion, even against the will of their parents (1). III. Therefore, those who have been condemned with an anathema by the Council of Trent, Session 24, chapter 4, concerning marriage, for asserting that marriages of children contracted without the consent of their parents are invalid, and that parents can make such marriages valid or invalid. (1) Pallavicinus, *Bistoria del Concilio di Trento*, 1.22, chapter 4, recounts that among the Fathers, there was a long and considerable debate regarding what should be decided concerning marriages of children contracted without the consent of their parents. The Gallican bishops requested that the Holy Synod declare such marriages invalid, those contracted by males before the age of 18, and by females before the age of 15. The decree was often revised; but finally, the Fathers issued a decree stating: "Although it is doubted, clandestine marriages made with the free consent of the contracting parties are true and valid marriages, as long as the Church has not declared them invalid, and therefore they are to be considered valid, as the Holy Synod condemns with an anathema those who deny that such marriages are true and valid, and those who falsely assert that marriages of children, contracted without the consent of their parents, are invalid, and that parents can make such marriages valid or invalid; nevertheless, the Holy Church of God has always detested and prohibited such marriages for most just reasons." In this decree, the word "although" seems to refer to the very same thing; thus, the Council of Trent condemned and prohibited clandestine marriages, not those that are entered into without the consent of the parents. For the latter are declared valid and lawful; and it would be absurd to say that the same Council of Trent, in the same context, would condemn and prohibit them; whereas the Second Vatican Council itself considers and confirms such marriages.

[*Latin ed. p. 445*]

REMOVING OBSTACLES 445 IV. According to both civil and canon law, only the insane and those lacking mental capacity, who are entirely devoid of the use of reason, can be legitimately prevented from entering into betrothals and marriages; otherwise, if they do not entirely lack understanding, they cannot be so prevented. V. It cannot be said that a young woman, according to the testimony of the aforementioned Doctor and the Bishop, is entirely devoid of understanding, as long as she possesses the capacity to exercise civil rights; therefore, the father's opposition should be considered a deceit and a calumny.

-«s-*- MARRIAGE. March 20, 1880. SUMMARY OF FACTS. Aloisia, born of a mixed marriage of a Protestant father and a Catholic mother, had already completed the third decade of her life when a very wealthy young man, James, born of Methodist Episcopal parents, returned to the American state of N. after a six-year journey through Europe. Aloisia's

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parents resided in that state and were already acquainted with the young man James. Hence, a renewed friendship arose, and the parents of Aloisia were easily persuaded by the young man's considerable fortune (which amounted to twice one hundred thousand dollars in gold) to consent to his marriage to their daughter. Therefore, James was offered to the young woman as a suitor; a young woman who had long been accustomed to associating with noble circles; and who, not only exhibited herself adorned with virtuous morals, but also, by adhering to the profession of a religious virgin, would be granted ample freedom in her own devotion. Initially, the young woman showed some reluctance to enter into the marriage, stating that she was too young and wished to wait until she could enjoy her own freedom. However, her mother never showed any signs of sympathy or disapproval towards her daughter. When, however...

[*Latin ed. p. 446*]

446 Through the strict upbringing of her father, and accustomed from her youth to a docile and complete obedience, she was easily persuaded by the arguments and exhortations of her husband to enter into marriage, although she had not openly declared her opposition to it. The marriage negotiations having been concluded, the marriage, which was to have taken place within two years, was celebrated within six months, on May 16, 1859, with the consent of her father, by the Archbishop of the City of N., in the presence of approximately sixty people. In order that this might proceed properly, a dispensation was granted by the Archbishop from disparity of cult, although the usual obligations imposed by the Church on these spouses were not observed without the opposition of James: and, although there was no apparent doubt at that time, James had not been baptized. The spouses lived together in the accustomed manner for a full six years, and although the woman admits that she hindered the consummation of the marriage, she does not deny that she endeavored to improve the marital situation, hoping to lead her husband to more virtuous habits; although she never found him lost. But contrary to the promises made to the Archbishop, she had all her children baptized by a heretical minister, her husband remaining silent. At that time, as the secessionist conflict between the states was intensifying, James's fortunes declined. He began to distance himself from his conjugal home, often leaving his wife and children in public places in the City of N. However, until the year 1867, Aloisia maintained this way of life, without considering or being able to consider leaving her husband. With this distressing situation continuing, she decided to go to Europe and return to her paternal home, which was then located in France; and in order to carry this out safely, she obtained her husband's consent to sell valuable jewelry, a gift received from him, which was estimated at 25,000 dollars. Upon her return to her paternal home, she endeavored to have her children rebaptized by a Catholic minister, and she also ensured that they

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were educated in Catholic institutions, to their great benefit and the edification of others. Meanwhile, James's assets were publicly disclosed, and she feared that creditors would harass her, and that her husband himself would reclaim the children.

[*Latin ed. p. 447*]

MATRIMONII 447 and in order to avoid this injustice, she sought and obtained a divorce from American judges, even though she did not intend to pursue anything further than a simple separation of persons and property. Ten years had passed since her departure from the American shores, when, at the urging of her father, who advised his daughter to enter into a new marriage, she presented a petition to the Sacred Congregation, requesting that the validity of her marriage with James be declared null, based on four grounds: first, due to the lack of free consent, obtained through unjust coercion by her father; second, due to the non-fulfillment of an essential condition, namely the free exercise of religion and the Catholic education of the children; third, due to an impediment to the marriage bond due to James's previous marriage with another woman, with whom he had been lawfully married; and fourth, due to a disparity of cult, due to the lack of baptism in James, which is now alleged to have been discovered. The petitioner was then ordered to exercise her right before the competent ecclesiastical court; from which she received an unfavorable judgment on March 27, 1879.

DEFENSE OF THE WOMAN. The defenders of the woman, describing the circumstances of the case, argue that the validity of the marriage is impugned on four grounds: 1. due to the lack of consent, caused by unjust coercion and fear imposed on the bride; 2. due to conditions essentially added to the marriage, which were never fulfilled; 3. due to the lack of the status of freedom in Mr. James; 4. finally, due to the impediment of disparity of cult, existing between the spouses, because James was not baptized. Regarding the first point, the petitioners argue that, in all contracts, and especially in marriage, true and free consent is required, which is essential, so that, in its absence, neither God can establish the marriage, nor can He confer the grace of the Sacrament upon it, as Sánchez de Matrimonio clearly teaches, book 2, disputation 26, n. 4 and following. Therefore, in the absence of the consent of one or both spouses, the marriage is necessarily invalid. Furthermore, they assert that nothing more hinders free consent than force and fear, in the presence of which, the marriage is not dissolved, but is not contracted at all. Where consent has no place...

[*Latin ed. p. 448*]

448. Fear and coercion invalidate marriage; chapter 44 concerning betrothals. Therefore, the Fathers of Trent decreed in chapter 9 of Session 24 concerning marriage reforms that violating the freedom of marriage

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is nefarious, because marriage requires a greater degree of free consent than other contracts. Consequently, while these [cases] are invalidated only through the use of exceptions, the latter [i.e., marriage contracted under fear] is invalid by its very law, if it is contracted under fear: Duran, in chapter 6 concerning prohibited things. Because a greater and more perfect voluntary act is required for it: Pontius, concerning impediments to marriage, causes 34, question 2 and 3, § 43, citing St. Thomas, who derives this from the perpetual nature of the matrimonial bond, or from the indissolubility of marriage. Schmalzgr. concurs, book 4, part 4, title 4, § 394. From this, the Orators conclude that all marriages contracted by force and fear are, under pontifical law, so inherently invalid and null that they are not validated by the cohabitation of the spouses, nor by the conception of children, as long as the cause of the fear persists, nor can anyone be compelled to persevere in such a marriage. Chapter [referring to a passage] concerning the one who was led [into marriage], etc. However, they maintain that Aloisia entirely lacked proper consent due to the force and fear imposed upon her by her parents, and that the cause of this fear constantly persisted, even while the marriage was promised, contracted, consummated, and maintained. Indeed, the actress openly confesses this in the petition submitted to the Holy See concerning the nullity of the marriage. It can be understood that this confession should be given great weight because the petition was made solely for the sake of her own peace of mind, and because it was confirmed by an oath. Furthermore, the witnesses, all of whom are considered reliable, unanimously assert that Aloisia's testimony is entirely trustworthy. All the witnesses, under oath, testify concerning the force and fear experienced by Aloisia. Moreover, the force and fear are increasingly evident if one considers the fact that the woman, with all her might, refused to consummate the marriage, and only yielded to the will of her parents. Therefore, the tribunal N. judge erred in stating that, based on reliable testimony, Mary freely gave her consent before and during the marriage; and that she renewed it after the marriage. No judicial witness is found who contradicts the testimony of the father, mother, and other family members, which should be given the utmost consideration above all others.

[*Latin ed. p. 449*]

MATRIMONII 449, with every exception, the greater age is considered, even when it is a question of invalidating a marriage, because (relatives) are presumed to be more informed than others; Sperellus in *decretalium* 76, paragraph 6, recently, number 25; Sánchez and Coscius in *de separacione matrimonialis*, book 2, chapter 8, number 32; Barbosa, volume 4, number 430, and other doctors. The advocates contend that no credence should be given to witnesses brought forward to the contrary, whether because the spouses came to know each other after the beginning of the

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marriage, or because they are heretics and Jews, title 20 concerning witnesses and attestations, chapter 26, cause 2, page 7. Furthermore, it is not permissible to consider what the witness Metcalfe testified, who stated that he attended the celebration of the marriage, concerning the apparent joy of Aloisia in that act; indeed, in cases of fear, nothing that appears to be done is valid, during the cause of the fear, so that the fear must be considered purged: Coscius in the vow 6 concerning the betrothal of children, family, section 30. The Sacred Roman Rota, in the decision 392, number 3, and the Sacred Congregation Séraphin, in the decision 854, number 6, and its confirmatory decision 887, number 2, state: "It must never be considered purged, unless the person to whom the fear was instilled is established in full freedom, etc., and therefore, all those things which can be attributed to free will, are considered to be done under fear, and not voluntarily, during the same cause of fear." This theory of law, they maintain, applies even if the spouses have lived together for several years and have had children, as testified by the Rota in Lisbon, January 29, 1466, section 6 and following, in the opinion of Arguelles, and the Sacred Congregation declared on September 43, 1429, that a marriage contracted by a daughter, through fear instilled by the mother, is invalid, even if the woman continued to experience fear for several years after the mother's death, living with her husband and bearing children. They argue that it cannot be objected that this concerns the matter of reverential fear, for even that invalidates marriage, unless the danger to freedom is excluded. Thus, Lessius writes in *Institutiones*, book 2, chapter 47: "To grave fear belongs reverential fear, by which the son fears the offense of the parent... the same if the parent persistently and repeatedly requests something." Pirhing concurs, book 4, title 4, section 4, number 49. The reason is because marriage introduces perpetual servitude, which is not admitted in a free person, unless with his full consent.

[*Latin ed. p. 450*]

450. It must be clearly established that the marriage is invalid; therefore, Coscius, in his *Consilia*, 163, letter a, states: "In cases of doubt, one must always favor freedom in marriage." Orators argue regarding the cohabitation, as if the fear had been resolved, whereas it is clear from the exposition of the facts that the fear persisted, and furthermore, that the father who brought him there is still alive; and furthermore, that Aloisia lived with him and received the opportunity to return, and immediately returned to her father's house, where she has lived for eleven years. Moreover, Aloisia's cohabitation with James was peaceful and spontaneous, and she was completely unaware of the nullity of her marriage, and lacking these things, Barbosa, in *Voti Definitivae*, book 2, volume 17, number 168, Schmalzgruber, in *Disputationes*, book 4, number 17 and following, and Sánchez, in *Disputationes*, book 4, number 18, number 3, state that the marriage can never be validated. Regarding the second part of the argument, the

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defenders maintain that the marriage is null because the essential conditions were not met. James, they argue, verbally accepted the conditions required by the Church and imposed by the Archbishop. Indeed, since marriage, besides the Sacrament, is a consensual contract made in good faith, it cannot exist if the conditions set by the parties are lacking, even if a dispensation has been granted, because, on the one hand, there was only deceit and a complete lack of consent, without which the marital bond cannot be perfected: Innocent III, in his *Decretals*. However, the defenders argue, Aloisia accommodated her coerced will to the conditions and qualities that were deceitfully promised by James; therefore, her consent was vitiated at its root, and no bond was created. It is well known that any condition can be introduced into a marriage; however, those conditions that keep it in suspense exclude consent, because they are contrary to its very nature. Sánchez, in *De Matrimonio*, book 5, number 2, paragraph 5, states: "Marriage itself cannot accept a condition, but its consent can... as long as the condition remains, the marriage is not." Sotus, in *Disputationes*, question 2, article 1, concurs. However, Reiffenstuel, in chapter 2, *De Regulis Juris*, number 6, admits that marriage can accept a condition.

[*Latin ed. p. 451*]

ON MARRIAGE: 4. If it does not appear to be honest in the future. Whatever doctrine is accepted, whether it teaches that marriage receives no condition within itself, and therefore is not valid from the beginning, or whether it teaches that marriage can be contracted under a condition, so that it acquires validity when the condition is fulfilled; in our case, since the conditions desired by Mary never existed, nor can they ever exist, it will always be true that this marriage was and is null. Arriving at the third part of the argument, the proponents maintain that in those places where the Council of Trent was not promulgated, the marriage presumed from a long cohabitation with a woman still holds, and therefore, in those regions, proceedings should be followed according to common law. See De Luca, book 4, page 5, notes to S.C.T., discussion 26, number 3; Sánchez de matr., book 3, title 18, number 1, and S.C. C. in Colonien, January 22, 1640. It is certain that neither in America, especially in the state of Tennessee, where James resided, nor in England, where he lived for many years, was the Council of Trent promulgated or accepted. Therefore, in order to establish the possibility of marriage between James and Aloisia, it must first be established that James had not previously entered into a presumed marriage with another woman; otherwise, he must revert to the previous bond. Chapter 30, on betrothals. However, James was bound by the bond of a presumed marriage before contracting marriage with Aloisia; therefore, the marriage contracted with Aloisia is null by law itself. The proponents strive to prove that James was already bound by the bond of a presumed marriage, citing the sworn affidavit of Aloisia to the Holy See,

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and from her own judicial testimony. Aloisia stated that she had kept a woman with James for many years, with whom she was said to have lived in a marital manner; and that she had lived with another woman from London for three years while traveling. From this, the proponents argue that James's freedom was lacking, and that the burden of proof to the contrary rests upon him. Finally, in the fourth part of their argument, the proponents contend that the marriage in this case is null due to the lack of baptism in James. To prove this, they recall what Benedict XIV wrote in his letters to the Cardinal of York.

[*Latin ed. p. 452*]

452 MARRIAGES, February 9, 1749: "It has been received and affirmed by the common consent of the Catholic Church that marriages are invalid due to differences in religion." However, they continue, James was never baptized; therefore, the marriage contracted by him with Aloisia, a Catholic girl, is null. They deduce that James was never baptized from several documents cited which are found in the records. Furthermore, they say, when the conferring of baptism is alleged, it must be proven by him who asserts it, for the denying party has no proofs, and things are not presumed, but proven. Moreover, in America, it is often the case that baptism is not conferred upon infants, as declared by Mr. Kenrick in his dogmatic theology, volume 3, chapter 6, paragraph 151, and by Konings, who writes: "If one excludes the 'ritualists,' there is no sect here which believes that baptism is necessary." Furthermore, no document proving the conferring of baptism could be produced. These things being so evident, they continue, what was written by the Curia N. regarding the validity or invalidity of James' baptism must be disregarded; for a non-existent thing has no properties. But, in the damned hypothesis that James was truly baptized, for those in American regions, presumption favors not validity, but invalidity of the baptism, as is derived from the documents of the Council of Baltimore II, chapter 2, on baptism, number 225, paragraph 24Q: "Heretics" and many others... (consider) baptism as merely a ceremony, and they often neglect certain rites without which the reason of the Holy [Church] does not consist, and therefore those who... bear the name of the Church almost always need to be baptized again." This is all the more true with regard to the Methodists, who, according to the testimony of Daniel Curry, a Methodist leader, neither believe that baptism is necessary, nor that it confers grace by the very act. Regarding the children of Aloisia, the patrons mention a few, whom they declare to be legitimate, because they were conceived in good faith from a marriage, even if invalid. Chapter 2: Who are the legitimate children. They state that the good faith of one spouse is sufficient for this, according to Schmalzgr., part 4, title 77, Reiffenst., book 4, title 17, paragraph 1, in agreement with the doctors, and as held by the Sacred Congregation in Herbipolis, regarding the Nullity of Marriage, on June 18,

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1839.

[*Latin ed. p. 453*]

OBSERVATIONS OF THE DEFENDER OF THE HOLY BOND, CONCERNING MARRIAGE. To defend the validity of the marriage in question from his side, the defender of the holy bond has arranged his observations into four sections, responding to each paragraph of the opposing defense, and refuting the objections raised in each of those paragraphs. And first, he discusses the objection of force and fear, noting that no valid reason has been presented "why Aloisia would oppose the marriage with James; not antipathy, as her mother states: 'I never could feel any affection, or aversion, for Mr. James'; not a love of virginity, because she never considered preserving it; not disparity of condition, because James's fortune attracted Aloisia's parents; not disparity of cult, because she herself states: 'I was of noble birth, and it never prevented me from practicing my religion.' The only reason for opposition, if there was one, was: 'I was younger, and I still wanted to enjoy my freedom'; however, this opposition was made at the beginning of the negotiations, but in the space of six months that followed, she revealed no opposition to anyone. With the causes of opposition removed, and with herself excluded from any manifestation of opposition, it is clear that there was no place for violence; and indeed, violence was entirely absent, as the woman herself admits; my parents did not use any force with me to bring about this marriage. But they did use persuasions and exhortations to obtain my consent. Therefore, if the bride consented, violence did not cease, but rather persuasions and exhortations were used. However, no one has ever imagined that persuasions, exhortations, and advice have the nature and malice of violence; for they do not compel, but rather stimulate the free will, as Menochius states in cons. 69 n. 45: "Counsel (according to M. Tullius, l. 2 de inv.) is a reason devised for doing something. Since counsel is a voluntary thing, no one is compelled to follow it." The same is said of "exhortation, which does not compel, but stimulates the free will," c. ult. fin. dist. 4. It is manifest that a father can rightly use persuasions and exhortations to prevent his son from taking a wife, because it is right for a father to use persuasions.

[*Latin ed. p. 454*]

454 MARRIAGES » and exhortations, can effect that his son may « lead » her. The defender argues this concerning the consent given before the marriage. Regarding the same matter, during the celebration of the nuptials, he adds that, according to Coscius, *de separatoribus*, Book 1, chapter 8, paragraph 54, it would be necessary to demonstrate the defect through complaints, sorrow, tears, and other indications demonstrating opposition. However, from the witnesses summoned in the sacred rite and brought to the contrary, nothing indicated that there was dissent. Furthermore, the

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bride and groom were joined by the Archbishop N., which certainly removes all suspicion of violence, since the Bishop, who is the guardian and avenger of the laws of the Church, would not in any way consent to a marriage that was celebrated against the will of the bride. *Ceph. caus. 91 n. 49, Cabali, cons. 170 n. 10 vol. 1, Grammat. dec. 66 n. 64, Sperell. dec. 5 n. 26, Rot. Rom. dec. 188 n. 9 cor. Ludovisi*. The intervention of the Bishop, or another religious man, eliminates all fear and suspicion in marriage. Moreover, there is no suspicion of violence from the events that followed the marriage: and because the relations between the spouses were good, as several induced witnesses testified. All of these things, indeed, confirm this to the greatest extent, because, despite the ruin of the husband's fortune, Aloisia did not separate from him for any other reason, nor out of antipathy, or hatred, or a bad life, but in order to have her children under her control, and to preserve her dowry from the loss; this reason, the parents said, caused our daughter to seek a divorce. The second argument, pursuing the nullity of the marriage based on the conditions added to it, anticipates that the conditions that Aloisia intended, namely, to marry a man who was endowed with good morals, and who would allow her free exercise of her religion, and the education of her children in the Catholic religion, are the same that are imposed by the Church when granting dispensations for mixed marriages. But James promised to observe these conditions, as the aforementioned testified. Otherwise, no one affirms that the Church, in imposing these laws, intends for the marriage to be contracted under the condition, so that its validity remains suspended until the same conditions are fulfilled; which is not the case.

[*Latin ed. p. 455*]

MATRIMONII 455. The validity of marriage can be verified until the death of either spouse, because as long as both live, the law remains in force, so that both the free exercise of religion may continue, and the children may be raised in the Catholic faith. Furthermore, even if such obligations were imposed as essential conditions, it is presumed that, since the marriage was consummated, and the woman repeatedly gave herself to the man in carnal intercourse, she has relinquished the condition, and the marriage is perfected accordingly; thus, after – text. in cap. 7 de cond. appos. Sánchez de matrim. 1, 5, disp. 8, n. 25 – therefore, the marriage, even if this condition had been relinquished, should be considered renewed by repeated consent, especially as noted by the opinion of the Curia N., because this renewal occurred in places exempt from conciliar sanction, where she had lived with her husband for a long time. Regarding the third argument for nullity, the defender argued that there was no bond of marriage between James and the two young women mentioned by Aloisia, because both, if their habitual way of life is true, were concubines. To this is added that, according to the civil laws of the State of Louisiana, marriage could not have existed

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with the first woman; because, since she was a woman of color, James would have been joined to her with the greatest disgrace. As for the London dancer, it is impossible to know where and when he lived with her; he may have had her as a companion in Paris, Brussels, Vienna, Naples, Rome, where the conciliar decree condemning clandestine marriages is in force, and where, even if he had wanted to, he could not have contracted marriage with her through the promise of marriage and carnal intercourse. Finally, the defender, preparing to attack the third argument for nullity, reminds us of Donellus, comm. in I. 5, ff. de reb. dub. « There are certain things about which we cannot affirm anything with certainty; but some matter can be explained by conjecture and presumption; this applies to those things for which that presumption holds true. » Moreover, the presumptions suggesting James' baptism are so strong that they are sufficient (which would be enough to maintain the validity of the marriage) to dispel any doubt.

[*Latin ed. p. 456*]

456. Marriage should not be doubted, but rather, on the contrary, the validity of the marriage should be considered certain. And first of all, there is the precise information given by James, and the information received from domestic tradition concerning his baptism, where he also adds a clear indication of the Methodist Episcopal rite and faith; for he states that he was cleansed by the sacred rite on July 20, 1839, by the Methodist Bishop, Mr. Kandree, at his home in Pernes, where the latter resided. To this information, the testimonies of many must be added, who affirm that James was baptized. Here, a very strong presumption arises, which, according to the expressions of the sacred canons, should be considered as certainty, that he was baptized, having been born of Christian parents, and having lived among them, as is stated in the following chapter, section 3, at the end, concerning those who are not baptized: "And indeed, concerning him who is born of Christian parents, and who is faithfully living among Christians, it is so strongly presumed that he has been baptized, that this presumption should be considered as certainty, unless it is proven by very clear arguments to the contrary." Barbosa, explaining this text, confirms the same in the following chapter, number 6: "For, indeed, he who is born among Christians is presumed to be baptized." Furthermore, Cardinal Petra, in the aforementioned constitution, number 26, states: "However, whenever someone is born of Christian parents, and is raised among them, he is presumed to have been baptized, unless the contrary is clearly proven." This presumption has all the more force because the Bishop, from whom James asserts that he received baptism, before his promotion to the highest pastor of his sect, declared that he would maintain the baptism of infants. Moreover, since James resided for a long time in the family, he was performing a very beneficial service to the family by baptizing the infant then born to them. The parents of the child, since they were numbered among

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the more prominent followers of the Methodists, undoubtedly sought the regenerative rite from the family's highest pastor. However, it is of no benefit to object that James' baptism is...

[*Latin ed. p. 457*]

MATRIMONII 457, as recorded in the registers of the Methodist Church; since it was easily omitted by a bishop nearing eighty years of age; or because he certainly had not been required to render an account of his administration; or due to a failing memory in old age, almost decrepit; or due to an infirmity that, shortly after, led him to the grave. These reasons are sufficient to justify the absence of the inscription, as taught by Cardinal Petra in the commentary on constitution 44 of Clement IV, number 25, who states that he was not baptized, just as he was "not found described in the book of baptisms of his parish..." This could have happened because the proof of the "reception of baptism" remained doubtful; especially because it is not evident that, simply because baptism is not described in the parish book, it was not received, since it could have been omitted through negligence; or even because it is possible that he was indeed baptized, but "not by the parish priest." Having thus vindicated the validity of the baptism, the patrons of Aloisia, in their opinion, have wasted their efforts in demonstrating both the disagreement among Methodists regarding baptism, and the variety of rites in its administration, in order to conclude that the baptism administered to James is invalid. However, having presented the contrary testimony, the Defender makes it clear that it is a general persuasion among Catholics in America, "that baptism conferred by non-Catholic ministers (excepting those Anglicans who are considered Ritualists) is of doubtful validity." Therefore, the general practice is to re-baptize those who were baptized by them, and to receive them into the bosom of the Church. If it is doubtful whether such a baptism was validly conferred by non-Catholics, then, according to a decree of the Holy Office of September 17, 1830, the baptism must be considered valid "1. In the case of heretics, whose sects prescribe the conferral of baptism without the necessary use of the essential matter and form, the particular case must be examined. 2. In the case of others who, according to their rites, validly baptize, the baptism is considered valid. If, however, doubt persists even in the first case, the baptism must be considered valid in order to establish the validity of the marriage."

[*Latin ed. p. 458*]

458. Concerning Marriages. After these matters have been carefully considered and pondered, the Most Eminent and Reverend Fathers, with wisdom and justice, have decided to resolve the following doubt concerning the nullity of a marriage. RESOLUTION. After due deliberation, the Holy Congregation, on March 20, 1880, judged it fitting to respond: Negatively. FROM WHICH THE FOLLOWING ARE GATHERED: I. In order to demon-

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strate the existence of a fear, whether it be causing a man to hesitate, or to be constant, or to be reverential, it must first be established, on the one hand, from a state of repugnance and opposition, and, on the other hand, from violence and coercion. II. However, violence cannot be inferred from persuasions and exhortations; for exhortation and persuasion are nothing other than counsel to do something; which indeed does not compel, but only excites the free will. III. Hence, without any offense to justice, parents can, through persuasions and exhortations, bring it about that their children enter into or abandon marriages; which, although they ought to be free, can nevertheless be done with the counsel of another. IV. It does not seem to be established in the matter that there is a true repugnance and opposition on the part of the daughter, nor a true coercion and violence on the part of the parents; hence, even reverential fear is not sufficiently proven. V. The conditions which the Church imposes (1) in granting (1) What are these conditions? They can be learned from the letter of Pius VII, "Magna Noscas," addressed to the Bishops of Poloniae: "Dispensation* for mixed marriages have been very rare (and indeed, most of them have been granted among the highest princes, and those only for very urgent reasons, and those which pertain to the public good; moreover, opportune precautions have been added, both so that the Catholic spouse may not be converted by the heretic, but rather that he may be kept aware of his duty to strive with all his power to bring the other back to the true faith, and also so that the offspring of both sexes born from that marriage may be raised in the sanctity of the Catholic religion."

[*Latin ed. p. 459*]

MATRIMONII 459: Concerning dispensations for mixed marriages, it is more appropriate to express the obligations to be observed in the celebration of the marriage, rather than conditions properly so-called, which could suspend the validity of the marriage. VI. Furthermore, the conditions under which the Church grants such a dispensation should be understood as conditions of the present, consisting in a transient fact; thus, the Church will deny the dispensation if these conditions are not fulfilled before the marriage, but will grant it if they have been fulfilled. VII. Both in the ancient law and in the law of Trent, the Church presumes that the parties, even if a condition is pending, have renounced it if they enter into marriage. VIII. In this matter, even if Aloysius had added these conditions essentially and for the future, it would be of no benefit, firstly because no one has been able to prove it, and secondly because it cannot be doubted that, for six years, during which she was delighted with the joys of motherhood and conjugal companionship, she did not consummate the marriage with marital affection. IX. Because of the new form established by Trent, betrothals for the future no longer pass into marriage through subsequent cohabitation, but it is necessary to contract the marriage in the present tense before a priest

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and witnesses. X. Regarding this matter, since James almost traversed all of Europe, it would be very difficult to prove whether he gave the woman accompanying him a promise of marriage in a place subject to the sanction of Trent (1), or in a place exempt, so that the promise of entering into marriage would pass into marriage through subsequent carnal cohabitation. (1) It is clear from Suarez, *De legibus*, book 4, chapter 19, paragraph 2, that even if James was subject to ecclesiastical impediments, whether diriment or impedient, "Heretics are truly subject to ecclesiastical jurisdiction; for they retain the character of baptism, which is the foundation of this subjection..." Therefore, since the impediments to marriage, established by ecclesiastical law, are universal, it is also evident that heretics are bound by them. And Benedict XIV, in a Brief to the Archbishop of York dated February 9, 1749, takes as a firm principle that heretics are indeed excluded from the unity of the Church, and are deprived of all those goods with which they enjoy when present in the Church, "but they are not freed from its authority and laws." This is confirmed by Pius VII in a Brief to the Archbishop of Mainz dated October 8, 1803.

[*Latin ed. p. 460*]

460. ON MARRIAGES. XI. Even if the records and witnesses are lacking, it can be maintained, by presumption of the law, that he was baptized, who was born of Christian parents and raised among them, unless the contrary is most clearly proven. XII. Although the records of the Methodist Church do not mention the baptism of James, nevertheless the presumption of the reception of this sacrament holds, both because many witnesses confirm it, and because the Methodist Bishop, acknowledging the necessity of baptism, remained in the family of James while he was being born. XIII. Doubt concerning the validity of a marriage cannot invalidate it, whether the doubt pertains to the reception or the validity of the baptism of either spouse, and this is because the Most Holy Councils and the Holy Inquisition have decreed that in such a doubt, the validity of the marriage must be upheld (1). XIV. In the case where the baptism of James is not certain, the doubt remains; therefore, from this point, the validity of the marriage remains; because, according to the doctrine of the Holy Council and the Holy Inquisition, whatever doubt arises concerning the reception of baptism, or concerning its value, does not diminish the validity of the marriage. (1) In Tarvisina, on the 4th of May, 1737, the Holy Council considered the following: "Consulting this Holy Congregation," Laura Dolimi was "greatly distressed by the fear that she may never have been cleansed by the waters of baptism, and whether it would be permissible for her to receive baptism under a condition." The Fathers, on the 28th of April of the preceding year, having considered the aforementioned doubt, ordered the Archbishop of Cortona to diligently inquire, etc. Now, after letters were given according to the prescribed method, the Archbishop recently responded that, obeying

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the orders of the Holy Congregation, he had indeed used great diligence... but had obtained no information about the aforementioned Maria Francisca (mother of Laura). Furthermore, in the parochial books of his Archdiocese, and especially in those kept by the Carmelites, who had charge of souls in the village of Petrarum, which were examined at the request of the Archiepiscopal Chancery, nothing was found, neither concerning Maria Francisca, nor concerning Peter Dolfini, nor any record made concerning their baptism or marriage. Therefore, the following doubt was proposed: "Should Laura Dolfini be baptized under a condition in this case, etc.?" The decision given was: "affirmative, and secretly and without prejudice to the validity of the marriage."

[*Latin ed. p. 461*]

ABBEY. March 20, 1880. SUMMARY OF FACTS. James I, in his last will, stipulated that "a simple benefice without cure of souls and residence, or a Canonry, at his discretion (of the heirs), under the title and invocation of the Conversion of St. Paul, should be established at the altar dedicated to the same Saint in the Cathedral Church which he himself had completely erected during his lifetime": for which he assigned an endowment of forty crowns, with the burden to be determined by the heirs, and with the reservation of patronage in favor of his family. After the testator's death, the heirs decided, in place of the simple benefice or Canonry, to found and properly endow a single Dignity, called an Abbey, which would be of a subdiaconal rank; and they wished that it should be the sixth Dignity of the Chapter, and that it should have a stall in the choir and a place in the Chapter, and also enjoy all the rights and privileges with which the other Dignities were endowed. However, they decreed that said Abbey Dignity should not have an active or passive voice in the aforementioned Chapter, nor should it receive daily distributions, or gifts, or any other emolument from the Chapter's table, until the patrons for the time being assigned to the Chapter the sum of money necessary to maintain it, which would be sufficient to ensure a stable and permanent endowment for the purpose of distributions. Furthermore, the patrons made a reservation of passive patronage in favor of their descendants, so that those of the family who were provided for in this Dignity could obtain it with a safe conscience and without dispensation, as with simple benefices; so that they could retain the Abbey, without dispensation, together with the Canonry and the Chaplaincy. For the appropriate endowment of the Abbey, they assigned forty crowns.

[*Latin ed. p. 462*]

462. The Abbey (with revenues of 2 3 5, 2 0) is annually to receive funds from the Abbot, derived from its existence in eight locations in the mountains; and also from the profits of a mill, with the obligation of celebrat-

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ing, either by themselves or by having it celebrated, the daily Sacrifice of the Mass at the aforementioned altar "alternately each week." However, it was added that during the time when the Abbey is vacant, the profits from the mill for the entire year would be entrusted to an administrator chosen by the Ordinary for the time being, in order to provide the necessary sum for distributions. On August 10, 1826, the Ordinary issued a decree granting: "The establishment of a perpetual or abbatial dignity in the Cathedral under the title of the Conversion of St. Paul, and to endow it properly... thus, we, by this present decree, establish, constitute, and anew create the abbatial dignity under the invocation of the Conversion of St. Paul." In fact, it is known that the founders never established the fund in the foundation documents for the daily distributions, and the endowment of the Abbey was completely lost due to the French invasion, except for a small income of 3 3, 6 0 in the locations in the mountains and the land itself. In the year 1848, Canon Joseph Fabbrini, the Rector of the abbatial dignity, presented a petition to the Vicar Capitular V., in which he stated that he had received a sum of 13,524 from a pious benefactor, with the intention of establishing a fund, which he had already established in the census since 1847, from whose profits a daily Mass would be celebrated perpetually in the Cathedral Church for the repose of the soul of the testator. Therefore, he requested that, through this sum of money, the Abbey's endowment could be restored, with the obligation of celebrating a daily Mass perpetually; which was granted by a decree of the Ordinary. However, the goods of the Church, including those of the Subalpine government, were unjustly seized by a law of the year 1867, and the founders claimed the census from the treasury, but they did not report the aforementioned income of 3 3, 6 0, which, when paid by the pontifical government, they did not disclose; therefore, at a later time, when this venerable city was indeed conquered by force and arms, the...

[*Latin ed. p. 463*]

The Abbey, although small, has not been able to escape the grasp of the grasping tax collectors. Now that the Abbey is currently vacant, the Patrons intend to present a Priest already provided from the Canonry in the Cathedral and from a simple benefice established in a parish within the diocese. The Ordinary hesitates to grant the institution; therefore, he has appealed to the Sacred Congregation, requesting that two doubts be clarified. Concerning the matter of the Abbey, it appears that the case is clear. Regarding the first doubt, it seems that the abbatial dignity of Saint Paul is truly and properly a benefice. Indeed, canonists commonly teach that, in order to constitute a benefice, six things are principally required, as Ferraris states in the article "Beneficium," number 8 and following: 1. That the benefice be erected by the authority of the Bishop: Cap. Nemo 9 de Consecrat, distinct. 22. - 2. That it have something spiritual attached

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to it: Cap. ult. de Rescr. in 6. - 3. That it be conferred by an ecclesiastical person: Cap. Ex frequentibus S de Constit. Cap. Si quis deinceps. 42 Cap. Si quis Clericus 46, and Cap. Nullus laicorum 48, caus. 46, q. 7. - 4. That it be conferred upon a cleric, that is, at least upon one who has received the tonsure: arg. cap. Ex Uteris 6 de Transact, 5. - 5. That it be perpetual: Cap. Praecepta 42 dist. 55, Cap. Sanctorum 2 dist. 10, Cap. Veniens de Filiis Presbyt. Cap. Ex parte 5 de Clerico aegrot. - 6. That it cannot be retained by the one to whom it is given, but must necessarily be conferred upon another: Cap. Cum ad nostram 7 de institut. Indeed, all of these requirements are clearly present in the abbatial dignity of Saint Paul; for it was erected by a decree of the Ordinary; it has a spiritual burden attached to it, namely the sacred duty of celebrating Mass every other week; the same is conferred by the Bishop, at the request of the Patrons; it is conferred upon a person in sacred orders, because the founder called him a subdeacon; it is perpetual, as is evident from the foundation documents; and finally, the passive right of patronage is reserved to the family of the founder.

[*Latin ed. p. 464*]

464. It seems, however, that the abbatial dignity no longer exists in the present circumstances, as an ecclesiastical benefice, because, since the endowment established by pious founders has perished entirely, the same benefice must also be considered to have perished, since it consists not in name, but in reality and substance. The abbot, in *consil. 47, n. 4*, does not exist. *Lotter, De re benef., lib. 2, quaest. 4, no. 36*. For, by a decree of the Ordinary of the year 1848, and with the consent of the patrons, a census established by Canonico Fabbrini was united to it; therefore, it would seem that the abbatial benefice still remains. For since the census was united to the Abbey by ecclesiastical authority, it acquired the same nature and formed one thing with it. According to the accepted rule of law, *Accessorium sequitur naturam sui principalis*: *L. fin. Cod. De non numerat, pec, Reg. Accessorium De reg. iur. in 6*. With these premises, the Abbey would seem to be incompatible with a canonry and a simple benefice, according to *Tridentinum, Sess. 24, cap. 47*, in which plurality of benefices is entirely prohibited; and it is permitted only in the case in which the first is insufficient, *Fagnan, in Cap. de Præb. n. 71*. Nor can a third benefice be obtained without a special Apostolic indult, even if the two previous ones are insufficient for the sustenance of the recipient, *S. C. C. Anagnina, 45 Aprilis 4628, Fagnan, in Cap. Litteras 33 de concess. præb.*. It cannot be said that the Abbey is held *de iure patronatus laicorum*; for even benefices held *de iure patronatus* are subject to the aforementioned law of Trent, as *Garcías de benef. part. 44, cap. 5, n. 280* and *S. C. C. in Bovien, 43 Novembris 4629* state. Furthermore, the founders did not speak of the simultaneous possession of the Abbey with a canonry or a chaplaincy of the Cathedral Church; nor is there any mention of the power of conferring

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the Abbey upon the same person who already holds two other benefices.

THE ABBEY SEEMS COMPATIBLE IN THIS CASE. However, it must not be forgotten that the endowment of this benefice has perished; but when the endowment perishes, the benefice itself perishes. Hence, the benefice which now exists cannot be counted among the ecclesiastical benefices.

[*Latin ed. p. 465*]

ABBATIAE 465: It is a question whether this pertains to ecclesiastical benefices, but it should be considered among lay chaplaincies or pious endowments. It does not impede that the endowment of the Abbey was restored by the constitution of Abbot Fabbrini. For this endowment appears rather to be something distinct from the endowment of the Abbey, which carries with it special obligations, and which was received from the local Ordinary, like a lay chaplaincy. Given this, the law of Trent, concerning the incompatibility of benefices, cannot be applied in this case. The Council seems to have had regard for the plurality of titular benefices, as can be gathered from its words: "when one holds more offices of the clergy"; and again: "no one ought to be registered in two churches." Therefore, pious endowments and chaplaincies with the obligation of celebrating Mass, even if obtained through the presentation of patrons, are not included under the decree of the Council of Trent, as is clear from the cause Bitecten, November 22, 1724, in which, concerning the third question: "Whether what pertains to the retention of benefices, should also pertain to pious endowments and chaplaincies of right of lay patronage in this case," the answer was: "In the negative." From this, it seems that the possession of the Abbey of St. Paul is not incompatible with the simultaneous possession of a canonry in the cathedral and a simple benefice in the diocese, in the same subject.

REGARDING THE SECOND QUESTION. However, if the Most Reverend Fathers were to decide that the Abbey of St. Paul is truly and properly an ecclesiastical benefice, and consequently incompatible with the other two in the same subject; nevertheless, it does not seem to be incompatible either with the canonry or with the choral chaplaincy of the same cathedral church, as is proposed in the second question. Indeed, the plurality of benefices held simultaneously by the same person is made incompatible, either because the institution of the benefice does not permit that more than one be administered by the same person; or because the first obtained is sufficient for the honest sustentation of the benefice. Certainly, from neither of these grounds does the Abbey of St. Paul seem to be incompatible with the canonry or choral chaplaincy of the cathedral church. Not indeed, concerning the first head, according to common law, Acts, Vol. XIII, title CLIV, 30.

[*Latin ed. p. 466*]

466. MONASTERIES, because common law prohibits, except in certain

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cases, anyone from holding and retaining two benefices of the same kind, even if they are simple benefices: see citation, Chapter on Multiple Benefices, Section. This same principle applies to prebends, as stated in Chapter 9 of the Decrees concerning Prebends. However, the Monastery of Saint Paul is not considered to be of the same kind as a Canonry or a Collegiate Chapel, for these latter require, in addition to other duties, participation in the choir and personal residence. Whereas, a monastery is founded in the manner of simple benefices, and the Abbot is not required to reside there, nor to participate in the choir, unless a fund for distribution is established. And this is indeed the case, as is explained by the observations of [Juae], who is considered the best interpreter of laws and foundations, in *L. Miniìàè ff. de leg. Cap. Cum Dilectus De consuet.., De Luca De iurep. disù.èê n. 9; Lott. De re benef. lib. 2 quaest. H n. 425. Indeed, he teaches us, not once or twice, but from the records of twelve Abbots, that four of them held a Canonry together with the monastery, as the Canons themselves testify from the Capitular records. On the contrary, it should be noted that the Monastery of Saint Paul appears to be incompatible with a Canonry or a Collegiate Chapel of the Cathedral; for it is established that benefices existing under the same roof are incompatible, as Rigant states in his commentary on the Regulations, 4, Section 8. This, however, is entirely in accordance with the intention of the Fathers of Trent, who firmly decreed that only one benefice should be conferred upon each person in the future, so that the number of ministers in a given place would not be diminished by the accumulation of many, and so that the divine service would not suffer detriment. Furthermore, the duties of a simple Canon or Chaplain do not befit the dignity of an Abbot, who, being constituted in a higher office, ought to perform greater duties. Let the contrary custom not be objected, both because this custom is not constant, since only four out of twelve Abbots held a Canonry at the same time; and because this asserted custom, when it is contrary to the divine service, seems to be unreasonable. The incompatibility of multiple benefices in the same place descends from natural law, as many Doctors have held. If one benefice is sufficient for the honest support of a cleric, then a contrary custom is to be considered as a breeding ground for sin, because it leads to wandering, ambition, and avarice.

[*Latin ed. p. 467*]

ABBATIAE 467, rare word. Benefit, article 6, number 7, M and following.* Extravagant, "Execrable" concerning Prebends. Therefore, the words of the foundation seem to be of no effect, which exclude such incompatibility, because although founders may add clauses and conditions contrary to common law, they cannot introduce corruptions by adding a condition that leads to sin and is contrary to the law of nature. Having considered both of these things, it was deemed prudent by the Most Reverend Fathers to

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decide by what response the doubts should be resolved. I. Whether the abbatial dignity of Saint Paul should be considered incompatible with two other benefices in the case. And, as to whether it is likewise to be called incompatible with a Canonry or a choral Chaplaincy, under the same roof in the case. RESOLUTION. The Sacred Congregation of the Council, having considered the matter, decided on March 20, 1880, to respond as follows: To the first and second, affirmatively. FROM WHICH IT MAY BE GATHERED: I. That the Council of Trent, in order to restore ecclesiastical discipline, decreed in Session 24, chapter 17, that only one ecclesiastical benefice should be conferred upon each person, especially if one is sufficient to sustain a life with honor. II. That the conciliar decree, by which plurality of benefices is disapproved, also includes benefices of lay patronage, provided that they are true ecclesiastical benefices; and with respect to them, the reasons of common law and of the same Council do not cease to apply. III. That no third ecclesiastical benefice can be obtained, without a special Apostolic indult, even if the two previous ones are not sufficient to sustain the recipient with honor. IV. That it cannot be doubted that the abbatial dignity is a true ecclesiastical benefice; since it is endowed with all the requisites, and yet remains in its own essence abbatial.

[*Latin ed. p. 468*]

468. MONASTERIES. Ecclesiastical benefits are also incompatible, due to the reason of their being exercised under the same roof, namely, in the same church, both because the same church is deprived of the ministry of one, and because plurality in the same church generates envy among the brethren.

DISPENSATIONS FOR MARRIAGE. March 20, 1880. Through summary petitions.

COMPENDIUM OF FACTS. The Tribunal which was called Regiae Monarchiae in Sicily was suppressed by the Most Holy Pope Pius IX, by a Supreme Constitution, on January 28, 1864, which was published to the people on October 10, 1867 (1). At the same time, through the supreme clemency of the same Most Holy Pope, by the Constitution *Multis gravissimis*, the bishops of Sicily were granted the faculty of freely granting dispensations for marriage in the third and fourth degrees of consanguinity and affinity, whether simple or double, and also mixed, solely for the benefit of those who, without being lacking in a canonical cause, were truly poor. However, the bishops of Sicily retained, as the aforementioned tribunal had in its practice, those who possessed 306 *libellae* or 24 *uncias* of annual income; the Archbishop of Trapani inquired of the Sacred Congregation of the Council whether this practice could be safely maintained. These petitions were discussed in the congregations on May 25, 1875, and were dismissed with the response: "Let them be considered by the Sacred Penitentiary and the Ministers

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of the Apostolic Datary." Presented again in the congregations on June 15, 1878, together with the opinions of the Sacred Penitentiary and the Apostolic Datary, the Sacred Congregation of the Council decreed: "It is to be maintained." This Constitution, Volume III, page 177. Alice also has it in *Multis gravissimis*, page 186. By this, the faculty of granting marriage dispensations was granted for ten years.

[*Latin ed. p. 469*]

DISPENSATIONS FOR MARRIAGE 469. By the decree of Benedict XIV, dated September 26, 1754, provided that it be demonstrated that the faculties are being extended, "By this decree, the poor were declared to be those who possessed nothing, or whose assets did not exceed 300 Roman monetary units, if they lived beyond the mountains; otherwise, the amount was extended to 300 ducats of the Royal Treasury, or 325 of the aforementioned monetary units." However, this decree did not fully apply to the Bishops of Catania and Messina; indeed, through a suppliant letter presented to them, on November 24th of the past year, they earnestly explained that it had come to their attention that many, in order to avoid a small penitential tax, were being joined together solely by the bond of civil law. For these reasons, they implore Your Eminence to deign to submit the aforementioned exposition of the Most Blessed Father's wisdom, so that, if it seems expedient, the sum determined by Benedict XIV may be increased to the amount that is deemed appropriate for these times.

SYNOPTIC DISCUSSION.

ARGUMENTS AGAINST THE PETITION. It is clearly evident that the requests of the petitioners should not be granted, as demonstrated by the decision already issued by this Holy Order, which, without sufficiently considering the present circumstances, deemed it necessary to adhere to the decree of Benedict XIV, recently announced. Nor should a greater favor be granted due to the obstinacy of some. The petitioners are also aware that dispensations for marriage are often granted by the Sacred Penitentiary itself, after their attestation, to which other Bishops of this peninsula resort, who find themselves in the same condition as themselves. Therefore, in order not to disrupt the order of ecclesiastical discipline, and so that the citizens and prelates of the island, especially given the rapid pace of change, should not be granted a favor that would place them in a better condition than others, they should be content with the granted indulgence, and no further grace should be given.

ARGUMENTS IN FAVOR OF THE PETITION. On the contrary, it should be considered that ecclesiastical discipline, although always founded on wisdom and charity, has not always been the same, but has been adapted

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to the various times, as Thomas says.

[*Latin ed. p. 470*]

470. MARRIAGE DISPENSATIONS concerning the new and old discipline, part 4, book 1, chapter 48, number 47, book 5, chapter 56, number 49, and part 2, book 4, chapter 45, numbers 48 and 44. Indeed, if one considers the times of our age, they are not the same as those that prevailed during the time of Benedict XIV; for those who were wealthy then, are now compelled, with the same amount of fortune, to seek assistance from their own labor, even for the sustenance of life, in Somãa. For it is not unknown how the burden of taxes increases daily, and how the price of provisions also rises, so that those who possess a value twice as great as that established by Benedict XIV, can rightly be called poor. Concerning this matter, the Orators decree: that in this area, an unchangeable standard cannot be maintained for all times, because the measure of poverty and affluence varies according to the circumstances of the times. For if, according to the decree of Benedict XIV in the year 1754, a family possessing 300 scudi was considered poor; now, such a family would have to be considered miserable, and would have to work daily to obtain food. Therefore, the prudent wisdom of the Holy Pontiffs has granted special dispensations and penitential faculties for this purpose, so that, as the opportunity arises, the measure established by Benedict XIV for their times may be moderated. For these reasons, also, dispensations have been granted from ancient times in the matter of poverty, even to those whose patrimony did not exceed the value of 1000 Roman scudi. Furthermore, it has been observed that the sudden transition from the practice of Sicily, whereby those who had an annual income of 300 gold coins were considered truly poor, to the sum of 300 scudi according to Benedict XIV, has disturbed the consciences of many. Hence, many have preferred civil marriage to ecclesiastical marriage, perhaps with the counsel of unscrupulous individuals, which results in countless harms to civil society. And although it must be admitted that the Penitentiary Tribunal often grants dispensations gratuitously to those who are unable to pay, can this same favor be extended in every case? While many poor people, in order to avoid the small tax requested by the Penitentiary, are joined only by a civil bond! These matters, seriously considered, and with the understanding that the bonds of the law sometimes require relaxation, as decreed by the Council of Trent, session 25, chapter 48, concerning Reform.

[*Latin ed. p. 471*]

MARITAL DISPENSATIONS 471. It seemed that the prayers of the petitioners would be received with benevolent favor. RESOLUTION. The Sacred Congregation of the Council, on March 20, 1880, decided to respond: Considering the particular circumstances, and for the sake of preserving

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custom, it was decided to grant the requested dispensation. FROM WHICH WE GATHER: I. That, for reasons pertaining to the times, the laws of the Church, in their disciplinary aspect, are subject to moderation; so that the bond of the law may be relaxed, when the salvation of souls (which is its supreme norm) demands it. II. Hence, in this matter, it is permissible, out of charity for souls, to grant an indulgence, so that, notwithstanding the decree of Benedict XIV regarding the tax, the custom in force since the year 1801 may be maintained in granting marital dispensations; since many prefer civil marriage to ecclesiastical marriage, lest they pay the small tax of the Penitentiary (1). (1) Compare Vol. I, page 382, for information regarding how small such a tax is, and how reasonably it is demanded. FROM THE SACRED CONGREGATION FOR THE RITE OF MASS AND THE OFFICE OF THE SAINTS. Introit. Ps. 131. Let your priests be clothed with justice, O Lord, and let your saints rejoice: for David your servant has not turned away the face of your Christ. Ps. ibid. Remember, O Lord, David, and all his meekness. Glory be to the Father.

[*Latin ed. p. 472*]

MASS 472. Prayer. O Almighty and eternal God, who granted to the people of Slavonia, through the Blessed Cyril and Methodius, to come to the knowledge of your name: grant that, as we glory in their festivity, we may be united with their fellowship. Through our Lord Jesus Christ, your Son.

Reading of the Epistle of the Blessed Apostle Paul to the Hebrews.

"Brothers, many priests have been made, because they were hindered by death from abiding: but Jesus, because he remaineth for ever, hath an everlasting priesthood: Wherefore he is able to save to the uttermost those who come unto God through him, because he liveth for ever to make intercession for us. For such an high priest was it necessary for us to have, who is holy, innocent, undefiled, separated from sinners, and made higher than the heavens: who needeth not daily, as did those priests, to offer up sacrifices first for his own sins, and then for the people's: for this he did once, when he offered himself." (Hebrews 7:24)

Sequence of the Holy Gospel according to Luke, chapter 10.

"In those days: The Lord appointed other seventy and two..."

Offertory.

"O God, in your holiness: God of Israel, you yourself will give strength and power to your people: blessed be God." (Psalm 77)

Secrets.

"We beseech you, O Lord, look upon our prayers and the offerings of your people, that they may be pleasing to you in the festivity of the Saints, and that they may bring us the aid of your mercy. Through our Lord."

Communion.

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"What I say in darkness, say in the light," says the Lord: "and what you hear in your ear, preach it upon the house-tops." (Matthew 10)

After Communion.

"We beseech you, O Almighty God, through the intercession of the Saints Cyril and Methodius, to grant that you may deign to receive heavenly gifts, that you may grant us to despise earthly things. Through our Lord."

[*Latin ed. p. 473*]

473. OFFICE: For all Common Confessors, Pontiffs, besides the following: IN VESPERS. Hymn: "To those received in the bright dwellings of heaven, say, O faithful athletes, Slavs, a double praise, Amen, and glory of the nations. Love has united these brothers, and piety has led them to the wilderness, where they concealed the blessed treasures of life. Luke, who shines above the temple, fills the Bulgarians, the Moravians, the Bohemians; soon, vast and numerous legions follow Peter. Receive, O you who are girded with the crown due to your merits, continue, you who are bent down in tears, praying; the ancient Slavs have given you gifts which you must defend. The generous land proclaims: "May the splendor of eternal faith be preserved; that which the Prince gave, Rome itself will always give, salvation. Savior and Redeemer of the human race, who provides all good things to us, may thanks be given to You, may all glory be Yours forever. Amen. Let your priests be clothed in justice. And let your saints rejoice. *Magnificat*. Antiphon: "May the feet of the evangelizers bring peace, good things, saying: 'The Lord your God will reign.'"

Prayer: O Almighty and eternal God, who through your blessed confessors and pontiffs, Cyril and Methodius, brought the nations of Slawonien to the knowledge of your name, and to the glory of your name, grant that the observance of their feast may be fulfilled. Through our Lord.

[*Latin ed. p. 474*]

OFFICE OF MATINS, Hymn as above. IN THE FIRST NIGHT OFFICE, Reading from Scripture, as occurs. IN THE SECOND NIGHT OFFICE, Reading IV. From the writings of Pope Leo XII. Cyril and Methodius, brothers, born in the vast city of Thessalonica, conceded to Constantinople that in that very city, the principal seat of the East, they might learn the arts of humanity. Both of them achieved much in a short time; but especially Cyril, who attained such renown in the sciences, that for the sake of honor, he is called "Philosophus." Then Methodius began to live as a monk; but Cyril was deemed worthy to receive a mission from Empress Theodora, with the approval of Patriarch Ignatius, to instruct the Chazars living beyond Chersonesus in the Christian faith; and, through his teachings and the inspiration of the Holy Spirit, he converted them, destroying many superstitions, and establishing a well-ordered Christian

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community. Having returned to Constantinople, he withdrew to the monastery of Polychronius, which Methodius had entered. Meanwhile, having successfully carried out affairs beyond Chersonesus, he sent a delegation to Rastila, the prince of Moravia, and urged him to send some people to Constantinople to discuss matters with Emperor Michael III. Therefore, Cyril and Methodius were designated for this mission, and, being received with great joy in Moravia, they set about cultivating Christian institutions with such vigor and diligent industry, that not long afterward, they were gladly called by the name of Jesus Christ. For this purpose, the knowledge of the Slavic language, which Cyril had previously acquired, was of great value, and they were able to render into the vernacular the sacred writings of both Testaments; for Cyril and Methodius were the discoverers of the very letters by which the language of the Slavs is marked and expressed, and for this reason, they are deservedly considered the authors of that language. Reading V. When the glory of their deeds was announced to Rome, Saint Nicholas, the First Pope, ordered the two brothers to come to Rome. Having entered Rome, they brought with them the relics of Saint Clement, the first Pope, which Cyril had brought from Chersonesus. Upon this news, Hadrian II, who...

[*Latin ed. p. 475*]

Nicholas, having completed his 475th year, accompanied by the clergy and the people, proceeded to meet them with great solemnity and honor. Then, Cyril and Methodius reported to the Supreme Pontiff, in the presence of the clergy, concerning their apostolic work in which they had diligently and piously labored; but when they were accused of envy by certain Slavs, who claimed to have seen them performing sacred rites, they presented reasons so certain and so convincing that both the Pontiff and the clergy, and even those who had sworn to the contrary, praised them and affirmed that they were blessed in the faith of Saint Peter. The Roman bishops, consecrated by Hadrian, were to remain in Rome. But it was divinely ordained that Cyril should spend the remainder of his life in Rome, maturing more through virtue than through age. Therefore, his body was carried in a public funeral procession and laid in the tomb that Hadrian had prepared for him; then it was taken to Saint Clement's and buried near the remains of that saint. As the procession passed through the city during the holidays, singing psalms, the Roman people witnessed that the most holy man had been offered the heavenly honors due to him. Methodius, returning to Moravia, there diligently and with great zeal established the flock, promoting the Catholic faith. He also confirmed the Pannonians, Bulgarians, and Dalmatians in the Christian faith; and he worked diligently to bring the people of Carinthia to the worship of the one true God.

Chapter VI. During the reign of Pope John VIII, who succeeded Hadrian, having been suspected of heresy and violating the customs of his predeces-

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sors, he was again accused and ordered to come to Rome. Before John, and several bishops, and the urban clergy, he easily demonstrated that he had steadfastly maintained the Catholic faith and had diligently taught others; and that, concerning the use of the Slavic language in the performance of sacred rites, he had done so with the permission of Pope Hadrian, and not in opposition to the sacred laws. Therefore, the Pope, pleased with Methodius, ordered that his archiepiscopal authority and his Slavic mission be confirmed, and gave him letters to that effect. Wherefore, having received this confirmation, he diligently continued to fulfill his duties, for which Methodius, returning to Moravia, willingly accepted death. He converted the Prince of Bohemia and his wife to the faith, and spread the Christian name far and wide among that people. Some Gospel writers brought the light to Poland, and, as it is said, founded a bishopric in Lviv.

[*Latin ed. p. 476*]

476 In Moscovia, having established the proper order according to its own name, he established a metropolitan see. And already feeling himself approaching human death, he designated a successor, to Kiosuos; and he himself, together with the clergy and the people, exhorted them with the highest precepts of virtue, and departed peacefully. Finally, returning to Moravia, the pontiff, as if a path had been opened to him in heaven, followed Cyril with great honor as Methodius departed. The feast of these men, which the people of Slavonia have long celebrated, Pope Leo XIII ordered to be observed throughout the entire Church with a proper Office and Mass each year.

IN THE THIRD NIGHT HYMN:

From the Holy Gospel according to Luke, Chapter 10:
"In those days, the Lord appointed seventy-two others..."

TO THE VERSES:

O glorious motherland,
The horror changes to "Greetings, Slavs!"
"Greetings, friends, brothers!"
Rome applauds and receives you,
Bringing Christ to the farthest barbarian lands;
As many as have been immersed in error,
May they be gathered into the one flock of Christ;
May faith, emulating their deeds, flourish more beautifully.
You, blessed Trinity, and you, born of the Father,
Release the hearts bound by sorrow,

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And reconcile the Slavic people with heavenly love,
Filling them with your divine light.
Strengthen the new flock with new vigor.
Come with ardent desire;
Protect your people, O Mother;
May your crown increase.
And now, serene in heaven,
We offer you our humble hymns;
Having gathered the flowers of sanctity,
May you snatch them away;
Grant us to follow your illustrious footsteps.
Amen.
Let the people recount the wisdom of the saints.
And let the Church proclaim their praises.
To Benedict.
Antiphon: "They served the Lord all the days of their lives; therefore, the Lord God of Israel clothed them in the robe of glory."
Prayer, as above.

[*Latin ed. p. 477*]

477. THE OFFICE FOR SECOND VESPERS. Hymn and the "fiat," as in First Vespers. Antiphon: "These are holy men, made friends of God, glorious in proclaiming divine truth: their tongues have become keys of heaven."

PRAISE BE TO THEM! They are to be inscribed in the ROMAN MARTYROLOGY on the seventh of the Ides of March, at Rome, and in MÃ¤hren, of the Holy Bishops Cyril and Methodius, who converted the Slavs and kings to the faith of Christ; and their feast day is to be observed on the third of the Nones of July, as Pope Leo XIII decreed. On the third of the Nones of July, and on the seventh of the Ides of March, the Holy Bishops Cyril and Methodius, concerning whom see note (1).

(1) A report concerning the decrees of the Holy Congregation regarding the office and Mass of these saints was submitted on page 238.

APPENDIX VIII. CONTAINING FURTHER DECREES OF THE HOLY CONGREGATION OF RITES FROM ANGRA.

The Most Reverend present Bishop of Angra humbly requested a solution from the Sacred Congregation to the following doubts:

The Most Reverend present Bishop of Angra humbly requested a solution from the Sacred Congregation to the following doubts:

DOUBT I. Can a Bishop, entering the church wearing a large cape or a rochet, cover his head with a biretta after he and others have been sprinkled

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with holy water, as he proceeds to the altar of the Most Holy Sacrament?

DOUBT II. Must a Bishop, solemnly attending Mass wearing a cape or a rain cloak, recite the Confiteor before the altar, up to the prayer for Indulgence, exclusively, or, as some more recent rubricists teach, up to the end of the verses and the word "Amen" inclusive?

DOUBT III. Can Bishops residing outside their dioceses wear a mozzetta over a mantelletta, as is the custom in Lusitania?

DOUBT IV. Must a Bishop kiss the text of the Gospel?

[*Latin ed. p. 478*]

478 APPENDIX VIII. •and Through evangelical sayings, etc., when should one say, wearing only the Rocchetto and Mozzetta, when solemnly attending Mass?

DOUBT V. Can a Bishop use a train [on his vestments] when the Most Holy Sacrament is exposed for adoration?

DOUBT VI. If a Bishop is carrying the Holy wood of the true Cross in processions, can he wear a mitre, or not?

DOUBT VII. When a Priest is solemnly celebrating, how often should he greet the sacred ministers with a covered head, when he is seated, or should he only make a slight bow with his head covered?

DOUBT VIII. When the celebrant, kneeling before the Most Holy Sacrament publicly exposed, should he prostrate himself completely each time he rises and kneels again, or only when he approaches the altar, when he departs from it, before and after the thurification?

DOUBT VIII. Should those seated in the choir uncover their heads when the words "Tu autem, Domine, miserere nobis" are recited at the end of the readings?

DOUBT X. Can a Priest celebrating a solemn Mass give a blessing to the preacher who speaks after the Gospel?

The Sacred Congregation of Rites, after carefully considering the doubts proposed, and at the request of another from the Masters of Ceremonies of the Apostolic See, decided to respond as follows:

To I. Negatively, according to the Ceremonial of Bishops.

To II. The custom should be observed.

To III. Affirmatively, as long as the custom prevails.

To IV. The Ceremonial of Bishops should be observed.

To V. Affirmatively, as long as he celebrates solemnly.

To VI. A decree should be given in Mutina on September 22, 1837.

To VII. The custom should be observed.

To VIII. A decree should be given in Marsorum on November 12, 1831.

To IX. Negatively, unless a custom exists.

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To X. Negatively.

And thus it responded and ordered it to be observed on August 18, 1877.

ILLERDEN. Marianus Puigllat y Amigo, a cleric, and Bishop of Illerda, of the Ecclesiastical Province of Tarraco, supported by the decree of the second Provincial Council, which established that Doctors and Licentiates in sacred theology or canon law should have precedence over Commensals or Beneficiates, both in the choir and in processions, with the precedence of the doctorate being maintained by antiquity, introduced this new discipline for the entire clergy of his Cathedral Church to observe.

Indeed, the Reverend Felix Costa, Master of Ceremonies of the aforementioned Cathedral Church of Illerda, not having a degree, but having been ordained a priest for forty years, was distressed that a newly ordained priest with a degree would take his place in the choir, in violation of the aforementioned decree, and appealed to the Sacred Congregation of Rites.

[*Latin ed. p. 479*]

The following questions were submitted for resolution, namely: QUESTION I. Whether such a disposition of the aforementioned provisional regulation is to be admitted and maintained? QUESTION II. Whether the Orator should be restored to his former position, even if he is not yet ordained? QUESTION III. And, supposing the affirmative answer to the previous questions, whether such a canonical provision is to be observed by all members of the choir? QUESTION IV. Whether such a constitution of the Synod of Tarragona can stand, or have any validity, when it is contrary to the repeatedly issued decrees of the Sacred Congregation of Rites, which establish the true dignity in the priesthood? The aforementioned Sacred Congregation, after considering the report of the undersigned Secretary, and a written opinion from another of the Masters of the Sacred Ceremonies, having duly deliberated, decided to respond as follows: To Question I: Negatively. To Questions II, III, and IV: Provision is made in the first response. And thus it was declared and ordered to be observed on September 1, 1877. The Director of the Calendar of the Society of Jesus, for the proper performance of the Divine Office and the celebration of Masses, submitted the following questions humbly to the Sacred Congregation of Rites, namely: QUESTION I. In Spain, there are some Regular Canons to whom a church has been granted by the Bishop, which formerly belonged to another Regular Order. The question is whether those who actually use the church, in which, indeed, confessions are heard, sermons are preached, and the Sacrifice of the Mass is celebrated, are obliged to perform the Office of Dedication, if the church is consecrated and is a titular church with a feast day (octava), or, on the contrary, are they to omit it? QUESTION II. Since the general rubrics prescribe that, besides the common prayers or suffrages of the Saints, a commemoration of the title or patron is to be made after the Vespers of the Sabbath, the question is: 1. Whether, for the title,

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the title of the Cathedral church or of the Regular Canon's own church is to be understood? 2. Whether, if a commemoration of the patron is made instead of the title, it is permissible to choose the patron of the entire region, rather than the patron of the diocese and city? QUESTION III. The Sacred Congregation of Rites decreed on August 31, 1839, that Regular Canons are to conform to the Office of the community in which they reside, even if they are there only as temporary residents. The question is whether this aforementioned decree is to be understood only with regard to those Regular Canons who recite the Divine Office in the choir, as some believe, or with regard to all indiscriminately, even if they are not obliged to be in the choir? QUESTION IV. Since, according to the rubrics, a collection for the Most Holy Sacrament is to be taken, there is disagreement about the place where it is to be taken; and the origin of the different opinions is found in the different interpretations of the decrees of the Sacred Congregation of Rites of June 23, 1739, and February 10, 1737, which are conceived in the very same words, namely: "Mechlin. VIII. Whether, when Mass is sung..."

[*Latin ed. p. 480*]

480 APPENDIX VIII. is contained in the aforementioned Decree; especially since no special mention is made of religious orders? 2. Can and should they receive the Octave? 3. Can they be compelled to receive the Octave, especially since they are not bound to any Octave celebrated by the secular clergy, as can be gathered from the decrees of the Congregation of Sacred Rites? Furthermore, the aforementioned Congregation, after carefully considering the report of the undersigned Secretary, and after hearing the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, decided to respond as follows: Regarding I. Concerning the Office, since at least from what has been presented, it cannot be said that the Clergy of the Society of Jesus, particularly the Archbishops and Bishops of Spain, are bound by it; concerning the Mass, as to whether they are bound to celebrate it, both on the day of Dedication and on the Feast of the Titular, it is extended to the entire division of Spain. Regarding II. 1. Negatively to the first part; affirmatively to the second. 2. Concerning the first part, the following are read from the Decree of September 23, 1848, to I: concerning the second part, the following provision is made by the resolution of the Sacred Congregation of Rites, dated August 31, 1877, in Mechlin, to I: to all those in Spain who are subject to the Canonical Hours, the Office of the Blessed Virgin of Kolomna, commonly called "del Pilar," which previously belonged only to the Kingdom of Aragon, should be fulfilled with a double Office of the first class with the Octave, as has been decreed by the Sacred Congregation of Rites on June 19, 1862, and as was decreed on September 4, 1715, in the aforementioned document. 3. To the first part, affirmatively; to the second, negatively. 4. To the first part, affirmatively; to the second, negatively. 5. Regarding the first part, affirmatively or they

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are bound; regarding the second part, negatively; regarding the third, it is understood. And thus it responded, and ordered that the commemoration of the Venerable should be made before all other commemorations, before the Holy Sacrament is exposed on the altar, and that this should be done before all other commemorations, after all the prayers of precept have been said. "Others, however, say that the commemoration of the Venerable should be made after all the prayers of that day's Office, while others say after the prayers not only of that day, but also after the prayers commanded by the Bishop, if any are held. The question is, which interpretation should be followed, the former or the latter?

[*Latin ed. p. 481*]

481 TO THE MOST HOLY AND VENERABLE L ORD, OUR SUPREME PONTIFF, BY DIVINE PROVIDENCE. PAPAL CONSTITUTION Concerning the definition of certain points of contention between Bishops and Regular Missionaries in England and Scotland. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, for the perpetual memory of the matter, remembers that Our Predecessors, the Roman Pontiffs, have always cherished the illustrious English people with paternal affection, as history testifies, and as the blessed Pius IX clearly demonstrated in his Encyclical Letter to the Universal Church, dated October 3rd of the year 1840, of the Incarnation of the Lord. Furthermore, when that Pontiff restored the episcopal hierarchy among the English, he, to some extent, and as time permitted, added to the benefits that the Apostolic See had bestowed upon that nation. For with the restoration of the dioceses, that part of the Lord's flock, already called to the marriage of the Lamb of Heaven, and associated with His mystical body, has regained a fuller firmness of truth and order through the governance and administration of the Bishops. For, as St. Irenaeus says, (1) the Bishops have a succession from the Apostles, who, with the succession of the episcopate, received a certain charisma of truth, according to the will of the Father; and thus, as St. Cyprian reminds us, (2) the Church is established upon Bishops, and all the acts of the Church are governed by those same prelates. This wise counsel has been wonderfully confirmed by events; for, indeed, more provincial councils have been celebrated, which have established salutary laws for the religious affairs of the dioceses; the Catholic faith has been spread more widely day by day, and many outstanding individuals, both in nobility of birth and in learning, (1) *Adv. haer.*, book IV, chapter 26, paragraph 2. (2) Letter 29 to the Lapsed. Acts, Volume XIII, page 81.

[*Latin ed. p. 482*]

482 CONSTITUTION regarding unity. Churches restored: the clergy greatly increased: religious houses also increased, not only from the established orders, but also from more recent institutions, which, through

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their excellent management of the morals of young people, or through the practice of works of charity, have deservedly contributed to both the Christian and civil society. Numerous pious lay sodalities have been established, and many new missions and churches have been erected, rich in noble instruction, adorned with excellent worship; also, many institutions have been founded for the care of orphans, seminaries, colleges, and schools, in which boys and young men are diligently instructed in piety and letters. This achievement deserves considerable praise for the ingenuity of the British people, which, as it is steadfast and unconquered against adverse forces, so it is easily swayed by the voice of truth and reason, so that, as Tertullian truly said of the Britons, "Britannorum loca Romanis inaccessa, Christo subiecta" (3). However, they claim their greatest merit for praise through the constant vigilance of the Bishops, and the willingness of the entire clergy to obey, and their promptness in acting with prudence. Nevertheless, certain difficulties and disagreements arising from the very circumstances, between the sacred prelates and the members of the religious orders, have hindered the attainment of more abundant fruits. For, although it had been prescribed by the aforementioned letters of Our Predecessor that the common law should be observed, they considered that they could decide on everything pertaining to the execution of that law, and that which had been permitted to the Bishops by the general discipline of the Church. On the other hand, several and weighty reasons prevented the sudden and complete abolition of the particular discipline of the missions, which had already become established. To avert these difficulties and to end these controversies, the Bishops of England, out of their obedience to this Apostolic See, petitioned Us to resolve them with Our supreme authority. We, in turn, readily accepted this request, both because We embrace this noble nation with no less benevolence than Our predecessors, and because nothing is more dear to Us than to see mutual concord and charity flourish everywhere, with the causes of discord removed. Therefore, in order that Our judgment might be more carefully and prudently made, We not only diligently considered the arguments and authorities presented by both sides, but also obtained a judgment from a specially appointed Congregation of several Cardinals of the Holy Roman Church, from two sacred councils, one of which is concerned with the affairs of Bishops and Regular Canons, and the other with Christian matters (I) "Lit", against the Jews, chapter 5.

[*Latin ed. p. 483*]

CONSTITUTION 483 concerning the promotion thereof. After carefully examining all matters that were to be considered, and after seriously weighing the reasons presented on both sides, they faithfully explained to Us what, in their opinion, would be most just and proper to decide concerning each question, in the Lord. Having therefore heard the counsel

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of the Cardinals, and having thoroughly understood the matter, We pronounce Our final judgment concerning the controversies and doubts that have been proposed in this Constitution. Although the matters that are brought up for discussion are numerous and varied, We believe that they can all be conveniently reduced to three main categories: one pertains to the exemption of religious families from episcopal jurisdiction; another concerns the ministries that are exercised by regular missionaries; and a third encompasses questions regarding temporal goods and the use to which they should be put. Regarding the exemption of religious orders, the prescriptions of canon law are certain and well-known. Indeed, although, in the ecclesiastical hierarchy, which is established by divine ordinance, priests and ministers are subordinate to bishops, and are governed by their authority (1); nevertheless, for the better arrangement of all things within religious orders, so that the members might live together in a peaceful and harmonious manner; and finally, for the increase and perfection of religious life (2), it has not been without reason that the Roman Pontiffs, to whom it belongs to define dioceses and to exercise their sacred power over all their subjects, have decreed that the Regular Clergy should be exempt from the jurisdiction of the Bishops. The reason for this was not that religious communities should enjoy a superior condition than the secular clergy; but that their houses have been, by a legal fiction, considered as territories separated from the dioceses themselves. Consequently, it has come to pass that religious families, who, by common law and by reason of the hierarchical principle, are subject to the Bishops, and, by reason of the primacy of the Roman Pontiff, are immediately subject to the Supreme Pontiff (3), have come to be under the power of the Supreme Pontiff, having been released from the power of the Bishops by a privilege. However, since they actually live within the boundaries of the dioceses, the tempered force of this privilege is such that diocesan discipline remains in effect, and therefore, the regular clergy must be subject in many respects to the episcopal authority, whether ordinary or delegated. Regarding this privilege of exemption, doubts have arisen, namely, whether [reference to Council of Trent, Session 23, concerning the sacraments, canon 7]. (2) St. Gregory the Great, Epistles, Book III, Letter IX; Benedict XIV, Epistles, Decretal Apostolic Servitutis, prid. Idus Mart., 1742. (3) Vatican Council, Constitution Pastor Aeternus, Chapter 3.

[*Latin ed. p. 484*]

484 CONSTITUTION regarding religious members who reside in England and Scotland for the purpose of missions: For the most part, these individuals live in private homes, in groups of three, two, or sometimes even alone. And although Benedict XIV, in the Apostolic Constitution *Apostolicum Ministerium*, dated the third day before the Kalends of June in the year 1753 of the Incarnation of the Lord, declared that these regular

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missionaries enjoyed a certain privilege, the Bishops nevertheless considered it necessary to re-examine the matter, since, with the restoration of the episcopal hierarchy, it is necessary for the Catholic affairs of that region to be governed according to the common law. Indeed, according to common law (1), it is established that houses which accommodate at least six religious members must be entirely under the authority of the Bishops. Furthermore, the author of the Constitution himself seemed to have placed the cause of the privilege in "public laws governing the state, by which monasteries and similar institutions are prohibited"; however, this cause has been found to have been removed, since for many years now, the laws of that kingdom have permitted religious members to reside in colleges. Nevertheless, these matters are not so insignificant that we should judge the privilege to have truly ceased. For although the restoration of the hierarchy means that Catholic affairs among the English are potentially subject to the common discipline of the Church; nevertheless, things there are still carried out in much the same way as they are in missions. Indeed, the Sacred Congregation has declared on several occasions that the Constitutions of Clement VIII, *Quoniam ix kal. Iulii* (1603), of Gregory XV, *Cum alias xvi kalen. Septemb* (1622), of Urban VII, the Roman Pontiff, *v kal. Septemb* (1644), and also the Constitutions of Innocent X, are not to be understood as pertaining to the houses and hospices of missions (2). And rightly so; for it had already been proposed to Clement VIII that whether religious men sent to the Indies for the conversion of souls should be considered as living outside the cloister, and therefore subject to the Bishops according to the law of Trent, that Pope decreed in the Constitution *Religiosorum quorumcumque* on the sixteenth day before the Ides of November in 1601, that they should "be considered as religious living within" the cloister; therefore, "in matters concerning the care of souls, they are subject to the Ordinary of the place; in all other matters, they remain subject to their superiors." And nothing else did Benedict XIV perceive or judge in his constitutions, *Quamvis v kalend. Martii* (1646), *Cum nuper vi Idus Novembris* (1751), and *Cum alias v Idus Iunii* (1753). From all of which it is clear that even (1) Innocent X, Constitution *Instaurandae*, dated October 15, 1652; Constitution *Ut in parvis*, dated February 10, 1654. (2) Sacred Congregation for the Propagation of the Faith, January 30, 1627; March 27, 1631; October 5, 1655; September 23, 1805; March 29, 1834.

[*Latin ed. p. 485*]

CONSTITUTION 48b: Concerning houses, however sparsely populated, which are included by the right of this privilege, and this not only in places where Apostolic Vicars reside, but also where Bishops preside: for the Constitutions which we have mentioned dealt with Bishops. Furthermore, it is clear that the principal reason for the exemption of regular missionar-

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ies in England is not to be sought in the civil laws which would aid in the founding of monasteries; but rather in that salutary and most noble ministry which is exercised by apostolic men. This was clearly indicated by Benedict XIV, who said: "The regular canons of England, destined for the mission, go there for the good of our holy religion." And Clement VIII also adduced the same reason when he spoke of religious members who went to India, stating that they had been sent there by the order of their superiors, and that they were subject to the discipline of the provincial superior, "to preach the holy Gospel of God, and to demonstrate the way of truth and salvation." Therefore, after the laws offensive to the regular sodalities had been repealed, and the Catholic hierarchy restored, the Bishops of Britain themselves, in the former "Westminster" Synod, testified that the privileges "by which religious men legitimately enjoy their rights in houses or outside of them" remained valid, "although they mostly live outside of monasteries." Therefore, we do not hesitate to declare that, in the present condition of the Catholic Church among the British, the regulars who reside in mission houses are exempt from the jurisdiction of the Ordinary, just as the regulars living within the cloister are, except in cases expressly specified by law, and generally in those concerning the care of souls and the administration of the sacraments. This controversy, which we have thus defined, was joined by another, closely related, concerning the obligation which Rectors of missions, having the care of souls, and their vicars, and other religious members, endowed with the faculties granted to missionaries, are subject to, to participate in those meetings of the clergy, which they call "collations" or "conferences," and also in diocesan Synods. To understand the importance and reason of this question, it is advisable to recall that in the Provincial Council of Westminster, it is prescribed in these words: "If there are two or more priests in the same mission, only one is to be designated as the first, who shall have the care of souls and the administration of the Church; the others shall exercise the care of souls which they have, depending on the first." (1) Having therefore ascertained the nature of the matter under consideration, and having set aside for the time being that part of the question which concerns Synods, it cannot be doubted that Rectors of missions...

[*Latin ed. p. 486*]

486 It ought to be the case that those gatherings are held for groups of clerics, which are called "collations." For their purpose is almost the same as that of parish priests; and Benedict XIV, in the Constitution *Firmandis*, § 6, on the eighth day of November, 1744, taught that even regular clergy are bound by this obligation, and the Holy Council, in interpreting the decrees of the Council of Trent, has declared this many times (1). Therefore, it was rightly decreed in the aforementioned Synod of Westminster: "All secular and regular priests are to be present at their respective collations,

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ready to answer, with due regard for their rights, those who have charge of souls." Otherwise, it would seem to be the case with vicars, and other religious men who perform apostolic duties. For it is indeed the case that, by law, these are to abstain from the aforementioned collations, as has been declared by the Holy Congregation of the Council (2). However, We do not overlook the fact that the Roman Council, held in 1725 under the authority of Benedict XIII, ordered all confessors, even those from regular orders residing within the boundaries of the province, to attend those gatherings "provided that no moral lectures are given in their meetings." Since it seems that something is being done in vain if it is done ineffectively, the Holy Council, considering the propagation of the Christian name to be of great merit, judged that the domestic gatherings of regular clergy in some mission areas would be of little benefit due to the small number of members, and therefore commanded all those who are engaged in this work to attend the gatherings of the clergy. Therefore, moved by these reasons, We declare that all directors of missions are obligated to attend the gatherings of the clergy by virtue of their office, and We also decree and command that vicars, and other religious men with missionary faculties, who are accustomed to reside in hostels and small mission houses, should also attend. The law regarding the duty of attending a Synod is explained in the Tridentine decree (3): "Synods of the diocese are also to be held annually, to which even those who are exempt, unless the exemption ceases, are to attend, nor are they subject to general chapters." Furthermore, with regard to parochial or other secular churches that are annexed, those who are in charge of them, whoever they may be, are to attend the Synod (4). This law was excellently explained by Benedict XIV (4). And We do not believe that anyone would object to the decree of Alexander VIII, on the third day before the Kalends of April, 1691, which...

(1) Forosempronien. 5 Septem. 1650 Lib. 19 Decret.

(2) Forosempronien. 12 Maii 1681 Lib. 53 Decr. fol. 258 VV. SS. LL. 12 Martii 1718.

(3) Sess. 24 cap. 2. de reform.

(4) De Synod, dioec, lib, 3 cap. 1 § 11. Aquipendien,

[*Latin ed. p. 487*]

CANON 487 provides that Abbots, Rectors, Prefects, and all superiors of religious houses which Innocent X had subjected to the authority of Bishops, should attend the synod. Since the Innocentian Constitutions do not apply to "apostolic men" who are engaged in sacred missions, it is easily understood that the decree of Alexander VIII, concerning those about whom we are now speaking, does not pertain to them. Therefore, we shall answer only this part of the question: it is necessary to adhere to the decrees of the Council of Trent. The next question concerns the appeal from the interpretation given by the Bishops of the synodal decrees. For, even reli-

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gious members must obey these decrees in matters pertaining to the care of souls and the administration of the sacraments (1), and in other matters "in which they are canonically required to be subject to the jurisdiction of the Bishops" (2). Indeed, there is no doubt that an appeal from these interpretations to the Apostolic See is permissible: "since, according to Gelasius I (3) and Nicholas I (4), they did not wish that canons should be appealed to from any part of the world; but that no one should be permitted to appeal from them." Therefore, the force and effect of this appeal can only lead to doubt. But this doubt is easily removed if a proper distinction is made between the cases. It is indeed permissible to appeal to the Regular Canons only in a devolutive manner, with regard to the interpretation of those decrees which, concerning common law, affect the Regular Canons, both in ordinary and delegated matters; whereas, in the case of the interpretation of other decrees, the appeal is also suspensive. For the authentic interpretation which comes from the Bishops, who are the authors of the Synod, is certainly of such importance as are the decrees themselves. Consequently, it is entirely clear that religious members may appeal from the first type of decrees in the same manner and with the same right as any person in the diocese may appeal from common law, namely, in a devolutive manner (5). But with regard to the other decrees, they certainly lose their force and reason of law against the Regular Canons; therefore, it is clear that they possess an exemption from episcopal jurisdiction as they possessed it before; until the authority of the Supreme Pontiff judges, by law, whether or not something else has been done with regard to them. Thus far, concerning the privilege of exemption; now, we must say something about those questions in which certain ministries are exercised by the Regular Canons.

(1) Council of Trent, Session 25, Chapter 11, concerning religious orders.

(2) Innocent IV, Chapter 1, concerning privileges, paragraph 6.

(3) Letter 7 to the Bishops of Dardanus, year 495, Volume 2, collection of Harduin.

(4) Letter 8 to Michael, the Emperor, Volume 5, collection of Harduin.

(5) Benedict XIV, Concerning Diocesan Synods, Book 13, Chapter 5, paragraph 2.

[*Latin ed. p. 488*]

488 CONSTITUTIONS have furnished opportunities for the exercise of this ministry. Among these, the ministry of souls excels, which is often, as we have indicated, entrusted to religious men within the boundaries assigned by the Bishops; and that place within those boundaries is designated by the name of a mission. Indeed, there has been discussion concerning these missions, as to whether and how their division, or, as it is commonly said, their dismemberment, can be carried out by the Bishops. For those who defended the rights of the Regular clergy maintained that

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this division could not be effected except for legitimate reasons, and with the solemn legal procedures prescribed by Alexander III (1) and by the Council of Trent (2). Others held the opinion of the Bishops. Indeed, if a division is made of a parish in the true sense of the word, whether anciently founded or more recently established by law, there is no doubt that it is a transgression for a Bishop to disregard the prescriptions of canon law. However, British missions are generally not erected as parishes according to legal procedures: therefore, the sacred Council, in order to promote the Christian name, considered it appropriate in the year 1866 for the Bishop to apply the office of celebrating Mass for the people, because it is not the constitution of the British dioceses that they are arranged as true parishes. Therefore, the legal procedures for the division of a simple mission are not to be transferred, those which were established concerning the dismemberment of parishes; all the more so because, due to the nature of missions and particular circumstances, a greater number and lighter reasons may arise that suggest this division, than those which are legally defined as necessary for the division of parishes. Let no one press the similarity that both have with each other; for when the obligation of observing legal procedures restricts freedom of action, it is not to be extended to similar cases. Therefore, in the absence of general laws of the Church on this matter, it is necessary that the authority of the Provincial Council of Westminster prevail, whose decree states: "Notwithstanding the appointment of a missionary rector," it is permitted to the Bishop, with the advice of the Chapter, within the limits of the mission to which he is assigned, to found new churches and to assign a portion of the district to them, if necessity or the good of the faithful require it." Given these circumstances, we respond to the proposed consultation: it is permissible for Bishops to divide missions, observing the form of the holy Council of Trent (3), as far as missions are concerned which are truly and properly called parishes; as for the others, according to the form of the Provincial Synod of Westminster (4). Furthermore, in order that the mission, which is to be divided, and its administrators may be better served, we add:

(1) Cap. ad audientiam de Selles, aedific.

(2) 3éss. 21 cap. 4. de reform.

(3) Cap. 4 sess. 21 de reform.

(4) De regimine congregationum seu initiionum, n. 5.

[*Latin ed. p. 489*]

CONSTITUTION 489: We decree that the opinion of the rector should also be sought, which – as we have learned – is a commendable practice: that if the mission is administered by religious members, the Prefect of the Order should be consulted; with the right of appeal reserved, if necessary, from the episcopal decree to the Holy See, solely for the purpose of review. After the mission, in which regular clergy have participated, a question

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sometimes arises: whether, when a new mission is established, the Bishop should give preference to those religious members when appointing a rector. – Although they claim this privilege for themselves, it is not obscure that significant difficulties and offenses will follow. Furthermore, in the matter under discussion, in a new establishment, one of two things must occur: either a parish in the true sense of the word, or a mere mission. If the former were the case, it would be contrary to Church discipline to prefer a member of a religious family to a secular priest; for, as the law currently stands, regular clergy are forbidden from holding the office of parish priest unless they obtain Apostolic permission. On this matter, Benedict XIV, in Constitution *Cum nuper*, dated the Kalends of November, 1743, wrote: "As it cannot be denied, according to the ancient law of canons, that monks and regular clergy were capable of governing parish churches, so now it is certain that, according to the most recent canonical discipline, it is forbidden for regular clergy to take charge of parishes without Apostolic dispensation." Therefore, the Holy Council of Trent, when interpreting the decrees (1), responded negatively to the question: "Should permission be granted to the Augustinian Fathers to establish a new parish under their jurisdiction?" Furthermore, if, as we stated secondly, a mere mission is established, there is certainly no law that prevents religious men from being chosen as rector among them; but it is not permitted for them to insist on being preferred. Therefore, the Bishop, addressing the matter completely and within his authority, must exercise his freedom; for where the laws are silent, the authority of the Bishop is the law. Especially since, as the saying of the doctors goes, the Bishop has an intention founded on law in all matters pertaining to the administration of his diocese. Therefore, the preference given to religious members regarding a new mission is either without any legal basis, or it offends against a clear legal provision. The assignment of the care of souls to the diligence of regular clergy sometimes gives rise to doubts; and these matters concern the missions located within the territory of Fismes, which are governed by them. It has begun to be questioned whether the Bishop can visit the cemeteries and pious places located within those territories. But in the cemeteries, an easy and obvious distinction can be made...

(1) In January, the forgetful ones, on the 25th of January, 1779.

[*Latin ed. p. 490*]

490 CONSTITUTION and, therefore, the reason for ending the controversy. For if we are speaking of cemeteries, those reserved solely for religious families are clearly exempt from the jurisdiction of the Bishop, and therefore from visitation; but those common to the multitude of the faithful, since they must be administered in conjunction with parish cemeteries, are undoubtedly subject to the jurisdiction of the Ordinaries, and therefore are rightly visited by the Bishop, as decreed by Benedict XIV in Constitution

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Firmandis, August 8, 1644. A similar distinction is made regarding pious places, by distinguishing those that are exempt from those over which the Bishop, either by law or by delegation, presides. Therefore, concerning both cemeteries and pious places, we briefly pronounce our judgment: the prescriptions of sacred canons and Apostolic constitutions must be observed. Closely linked to these doubts is the question of whether schools for the poor, even those that are elementary and are called "primary" schools for boys, are subject to the Bishops. For the ministry of teaching is most holy, and schools, concerning which we must speak, are next in order to pious places. It is evident from the very name to which they belong; for they are intended to suitably instruct children in the early elements of letters, the first truths of the faith, and the precepts of morals: this institution is necessary at all times, in all places, and in all conditions of life; and it has great importance for the safety of all of human society, as well as for the safety of individual men; for the education received in childhood largely determines how a person will spend the rest of their life. Therefore, what those who teach in such a place must especially provide, Pope Pius IX wisely indicated, writing: "In these schools, all classes of boys from the people, even from the tenderest years, must be diligently instructed in the mysteries and precepts of our most holy religion, and in piety, morality, and the proper way of living religiously and civilly, and in these same schools, religious instruction in particular must hold and dominate such a primary place in instruction and education, that other knowledge, with which youth is imbued there, may appear secondary." (1) From this, it is clear that the education of children must be included among the duties of Bishops, and that the schools in question, both in the most populous cities and in the smallest villages, must be considered among the works that most pertain to the affairs of the diocese. (1) Letter to the Archbishop of Freiburg, July 14, 1864, *Acta*, vol. 3.

[*Latin ed. p. 491*]

CONSTITUTION 491. Moreover, what reason suggests, history confirms. There has never been a time when the care of the Councils has not shone forth in the establishment and maintenance of such schools, for which they have enacted wise provisions. Indeed, their decrees aimed to ensure that bishops would strive to restore and increase these schools in towns and villages, and that children would be admitted to learn, with any expenses, if possible, remitted (1). By the authority of these same enactments, laws were defined concerning the instruction of students in religion and piety (3), and the qualities and virtues that teachers should possess were specified (4), and they were commanded to swear according to the formula of the Catholic profession (5). Finally, school administrators were appointed to oversee them, to inspect them, and to ensure that no vice or inconvenience existed, and that nothing was omitted from those matters which the

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diocesan laws had prescribed concerning their discipline (6). Furthermore, since the Fathers of the Councils understood that pastors were also responsible for the pastoral ministry, they assigned them a significant role in the schools for children, the care of which is closely linked to the care of souls. Therefore, it was decreed that elementary schools should be established in each parish (7), which were given the name of parochial schools (8); the pastors were ordered to undertake the task of teaching, and to seek the assistance of teachers and mistresses (9); they were given the responsibility of diligently managing and overseeing the schools (10); and if they did not perform all of these things faithfully and completely, they were considered to have neglected their duty (11), and were held accountable by the Bishop (12). Therefore, the arguments derived from reason and from facts converge to demonstrate that schools, which are called "poor schools," should be established according to diocesan regulations and parochial statutes.

(1) Synod of the Province of Cambrai, title concerning schools, chapter 1; Synod of the Province of Mechlin, title concerning schools, chapter 2.

(2) Synod of Namur, year 1604, title 2, chapter 1.

(3) Synod of Antwerp, under the title "Mireo," chapter 9, chapter 3.

(4) Synod of Cambrai, year 1550.

(5) Synod of the Second Province of Mechlin, title 1, chapter 3.

(6) Synod of the Second Province of Mechlin, title 20, chapter 4; Synod of the Province of Prague, year 1860, title 2, chapter 7.

(7) Synod of Valencia, year 529, canon 1; Synod of Nantes, as related in chapter 3 concerning the life and honor of clerics; Synod of Bordeaux, year 1583, title 27.

(8) Synod of the First Province of Mechlin, title concerning schools, chapter 2; Synod of the Province of Cologne, year 1863, title 6; Synod of the Province near Maynooth, year 1875.

(9) Synod of Nantes, cited above; Synod of Antwerp, cited above; Synod of the Province of Bordeaux, year 1850, title 6, chapter 3.

(10) Synod of the Province of Vienna, year 1858, title 6, chapter 8; Synod of the Province of Utrecht, year 1865, title 3, chapter 2.

(11) Synod of the Province of Cologne, year 1863, title 6, chapter 5; Synod of the Province of Cologne, year 1860, title 2, chapter 23; Synod of the Province of Utrecht, year 1863, title 9, chapter 5.

(12) Synod of the First Province of Cambrai, title concerning schools, chapter 2.

[*Latin ed. p. 492*]

492 CONSTITUTIONS: Those matters which pertain to a special jurisdiction must be included; and for this reason, the Bishops of Britain have, until this time, been accustomed to visit such institutions, both secular and

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regular, within their jurisdiction, as far as their power extends. And We, approving of this, declare: Bishops have the right, with regard to all things, to visit such schools of the poor, both in regular parishes and in secular ones. Another reason exists for other schools and colleges, in which religious men, according to the prescriptions of their order, devote themselves to the instruction of Catholic youth; in these, indeed, both reason demands, and We desire, that the privileges granted to them by the Apostolic See remain firm and intact, as was clearly declared in the year 1837 by the sacred Council for the propagation of the Christian name, when the acts of the Provincial Council of "Westminster" were published (1). As for the matter of schools and colleges of regular canons already established, it is still a question whether new ones may be founded. Regarding these, the question is asked: whose permission must be obtained? Furthermore, since this doubt extends more widely and pertains also to the erection of churches and monasteries, we consider all these matters within the bounds of a single question and judgment. And here, first, are the ancient Decrees, by which it is provided that no one should establish anything of this kind without the special permission of the Apostolic See (2). Afterwards, the Council of Trent forbade any such undertaking to be carried out without first obtaining the permission of the Bishop in whose diocese it is to be established (3); however, this decree of the Council does not invalidate the older laws, which require permission to be obtained from the Apostolic See. Therefore, since this matter was being handled more freely, Urban VIII (4), wishing to correct this improper custom, disapproved of such undertakings, both those undertaken without the permission of the Bishop, and those undertaken solely with his authority, and decreed that the laws of the ancient canons and the Council of Trent should be observed entirely in the future. Also, Innocent X, in the Constitution "Instaurandae" of October 13, 1642, ordered that no one from the regular families should presume to receive or found new houses or places without the special permission of the Apostolic See. Therefore, the common opinion today is, and is supported by the authority of judgments widely rendered, that it is not permitted (1). Decret. 26. (2) Cap. Religiosorum § confirms regarding religious houses, and cap. excess, praelat, in 6. (3) Council of Trent, session 25, chapter 3, concerning Regular Canons. (4) Constitution "Romanum Pontifex," March 13, 1624. From this.

[*Latin ed. p. 493*]

CONSTITUTION 493 concerning regular canons: both within and outside of Italy, new monasteries or convents, or colleges, may be founded only with the express permission of the Bishop, but also requiring the faculty granted by the Apostolic See (1). Following these same principles, the Sacred Council has decreed on several occasions that the permission of the Apostolic See and of the Bishop or Apostolic Vicar is absolutely necessary

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for the erection of churches, colleges, and other institutions, even in missions, where religious members have houses and residences (2). Therefore, for the reasons stated, we respond to the proposed question: it is not permitted for religious members to establish new residences, by erecting new churches, or by opening monasteries, colleges, or schools, unless they have first obtained express permission from the local Ordinary and from the Apostolic See. It often happens that a more subtle inquiry arises: whether both permissions are required, if the regular family is not undertaking a completely new endeavor, but rather wishes to convert existing institutions to other uses. However, the response will not be obscure or ambiguous if we distinguish between the various cases that may arise. At the outset, who would seriously doubt that it is permissible to convert those things that have been established for the sake of piety and religion to uses that are alien to religion and piety? Therefore, only three questions remain to be considered: whether it is permissible to remove something established in a particular place and transfer it to another; or to change it to a use that is consistent with it, such as converting a school into a church, a monastery into a college, or a house to receive orphans and the sick, or vice versa; or finally, to introduce a new cause or use while retaining the previous use. Now, concerning the first two of these, the religious members can certainly effect them by their own authority, as is prohibited by the decree of Boniface VIII, who forbade them "to receive new houses or places, or to change those already received" (B). Again, what can be done of either of these two, unless the matter relates to the foundation of new monasteries, colleges, houses, convents, and other similar regular institutions? But this, too, has been prohibited by Urban VIII through a constitution. The Roman Pontiff decreed that, "observing in all things and through all things the form of the sacred canons and the Council of Trent," it is so. Thus, only one matter remains to be debated: whether a new cause or use can be added while retaining the previous use. Then it is necessary to examine the matter more closely and accurately, to determine whether the introduction of this other use relates to the internal administration and domestic discipline, such as if a novice...

(1) Benedict XIV, Synod, diocesan, lib. 9, cap. 1, no. 9 — Monacelli, formula legal, part. 1, tit. 6, form. 19, no. 31.

(2) Sacred Congregation of the Propagation of the Faith, in meetings held on March 22, 1669; November 3, 1688, 1704, 1768; August 23, 1858; May 30, 1864; July 17, 1865.

(3) Cap. Cum ex eo de excess, praelat, in 6.

[*Latin ed. p. 494*]

494 A CONSTITUTION should be established in the monastery for the purpose of a community or a school, for the younger members; whether the boundaries of this internal administration extend beyond [the monastery],

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for example, if a school is established there or a college that is open to outsiders. Certainly, if these boundaries are exceeded, the matter reverts to one of the two situations which, as we have said, Boniface VIII and Urban VIII forbade to be done at will. But if the change is contained within the limits of domestic discipline, the Regulars certainly have the right to use [the property], unless perhaps the laws of the foundation prohibit it. From these considerations, taken individually, it is clearly understood: It is not permitted to religious members to convert what has been established for one purpose to another use without express permission from the Apostolic See and the local Ordinary, unless it is a conversion that, subject to the laws of the foundation, pertains only to the internal governance and regular discipline.

Now we proceed to the main point of the controversy, in which the question of the temporal goods of missions was discussed. These goods are obtained through the generosity of the faithful, who, with their own free will and intention, give donations, either with a view to the mission itself, or to the one who is in charge of the mission. Now, if the donation is made with a view to the mission, it is often unclear whether those religious to whom the donation has been given are obliged to render an account to the Bishop of what has been received and spent. And indeed, it was necessary for this to be done, so that the Christian name might be propagated, that the Sacred Congregation, on a matter of doubt concerning missions entrusted to religious Orders or Institutes in Great Britain on April 19, 1869, responded with the following words: "1. Regular missionaries are not obliged to render accounts to the Bishops concerning the temporal goods pertaining to themselves as regulars. 2. However, the Bishops have the right to demand accounts from these missionaries, as well as from secular clergy and parish priests, concerning those goods which have been given to the mission, or to the regulars in view of the mission." However, in order that a clear account of what has been received and spent might be established, the same Sacred Congregation, in instructions given on May 10, 1868, ordered that the goods of the missions should be carefully described, distinguishing those that belong to the mission itself from those that belong to the community or to individual members. Nothing has been decided or prescribed in these matters that does not fully agree with the most common teachings of civil law. For any offering given to a parish priest or another administrator of the Church, for the sake of some pious cause, is acquired by that very pious cause. Consequently, he who receives the offering acts as an administrator, to whom it belongs to expend it according to the intention and will of the giver (1). Since it is the duty of the administrator to render accounts of his actions (1) Fagnan, in cap. Pastoralis, on those things done by Prelates, n. 29; Card. de Luca in Conc. Trid. discur. 18, n. 5; Beiffenst. Lib.

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3 Beeret, tit. 30, n. 193.

[*Latin ed. p. 495*]

CONSTITUTION 495: To render an account, and to give it to him to whom the administration pertains (1), therefore, the parish priest or rector of a church cannot fail to give an account to the Ordinary of the place, to whose jurisdiction and pious administration the matter belongs (2). But the missions, concerning which action has been taken with Us, fully belong to the Bishop; therefore, an account of all the offerings collected for them must be presented to him. These things are not weakened by the fact that Urban II, in the Council of Clermont, and other Roman Pontiffs after him, decreed (3) concerning parish churches, that vicars attached to monasteries regarding temporal matters should answer to the Bishops concerning the care of the people, but not regarding temporal matters, since they are subject to their own monasteries; indeed, having set aside even the historical reason from which this arrangement originated, it has been certainly and thoroughly established, in those pontifical decrees and letters, that the term "temporalia" signifies the fruits of benefices and those things which adhere to the person who receives the benefice. Therefore, confirming what has been decreed and ordered by the Most Holy Congregation for the Propagation of the Faith, We decree that religious members, having given an account to the Bishop, must declare concerning the money, with regard to the missions entrusted to them, and how much of it and for what purposes they have spent, just as secular clergy missionaries do, according to the aforementioned resolutions of that same Congregation of April 19, 1869, and the Instruction of May 10, 1868. Finally, so that no one may fall into error or disagreement in carrying out what We have now ordered, We consider it necessary to define that the money and all things given to religious men with regard to missions are to be understood. For it is established in this matter that one must first consider what the giver intended; and if this is not apparent, it has been decided that, in the case of a donation given to a parish priest or rector of a church, the donation is to be presumed (5). But there is a great departure from this rule because of a custom, which some experts in ecclesiastical law teach to be almost common, by virtue of which "almost only" the offerings that are made in the church during Masses offered at the altar, and those made "for the administration of the sacraments, for blessings of marriages or of women after childbirth, for funerals and burials, or for other similar" (1) L. 1. § officium ff. de tutelae et rat. distr. — L. 2 § et sane ff. de negot, gest. L. Curator, L. Tutor Cod. de negot. gest. (2) Sac. Cong. Concilii Nullius, sen Nonantulan, iurium parochialium 27 Iunii 1744 ad dub. XII. (3) Lucius II ad Priorem s. Pancratii in Anglia, Alexander III. ad Monaster, s. Arnulphi, Lucius III ad Superior. Praemonstrat. et ad Abbatissam s. Hilarii in dioecesi Fesulana. (4). Gonzal. Comment, in Cap. I. de Cappel, monach. (5) Argum,

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ex cap. Pastoral. 9 de his quae fiunt a Praelat, cap. Transmissa, de Ve-rb. sign, ac praesertim cap, I de Statu Monach.

[*Latin ed. p. 496*]

496 CONSTITUTION: These [funds] are specifically allocated to the functions that pertain to the parish; by custom, almost all the rest are applied to the churches themselves, or to chapels, or to other specific purposes (1). Furthermore, if, in a parish or in a rectory, from which the faithful receive spiritual assistance (2), it cannot be presumed that the generosity bestowed is entirely without merit, when the Church is endowed with goods through which the splendor of religion and the support of ministers can be greatly promoted, a different judgment must be made than when the Church lacks such an abundance of goods, and is sustained solely or primarily by the generosity of the faithful. For then, the donors should be considered to have intended to contribute to the splendor of divine worship and the dignity of religion, in that manner and in that way which ecclesiastical authority determines. Therefore, among the early Christians, a law was enacted so that all money received as a gift should be divided among the Church, the Bishop, the clergy, and the poor. Moreover, the authority of the law, by prescribing the times and causes of donations, also ensures that the faithful cannot always, at their own discretion, determine the manner and the purpose to which the offered sum should be allocated; for the will of private individuals cannot effect that which legitimate authority prescribes for the common good. These considerations having been brought to our attention, we have seen that the Fathers of the provincial Council of Westminster acted prudently and opportunely, when, partly interpreting the pious and just will of the donors, and partly exercising the power inherent in Bishops to determine the allocation of funds and the times and causes for their bestowal, they decided, in the chapter on ecclesiastical goods, what should be considered in view of the mission [to be supported]. Therefore, it is required, and We decree, that in this matter, religious individuals should conform themselves to the laws of the Westminster Synod. Having resolved the controversies brought to Our knowledge, we are confident that the care which We have applied to these matters will contribute greatly to the tranquility and growth of the Catholic cause in England. Indeed, We have diligently and religiously interpreted Our pronouncements according to the rules of law and equity, and We do not doubt that those among whom We have pronounced judgment will exercise equal diligence and piety in their execution. Thus, under the guidance and prudence of the Bishops, the religious members of the English missions, having deservedly earned great merit, will strive and work with joy to bring forth the fruits of salvation from their labors, and both [will] act, as the words of Gregory the Great to the Bishops of England express it, with common counsel and

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concord.

(1) Reiffenst. L. 3 Decretal, tit. 30, n. 193. Van. Espen ius eccles, univ. part. 2, sect. 4, tit. 2, cap. 10, nn. 20 et 21.

(2) Argum, ex cap. quia Sacerdotes 13, caus. 10, quaest 1.

[*Latin ed. p. 497*]

SECTION 497. With ardent zeal for Christ, they unanimously agree, rightly judge, and, without causing disagreement among themselves, fulfill what they have judged (1). This concord is demanded by the paternal charity of Bishops towards their auxiliaries, and by mutual obedience of the clergy towards Bishops; this concord is urged by the common goal which is situated in the pursuit of the salvation of souls, with joined studies and efforts; this same concord is required in order to resist those who are offended by the Catholic name. This generates strength and makes even the weak equal to undertaking great things; this is a sign that distinguishes sincere disciples of Christ from those who pretend to be such. Therefore, we earnestly exhort each and all of you in the Lord, praying with Paul that you may fulfill our joy, that you may be of one mind, having the same love, and being united in spirit (2). Finally, so that what we have established may stand firm, we will and decree that these present letters, and whatever is contained therein, even concerning those religious members mentioned above, and others of whatever status, order, and dignity, who are involved in the aforementioned matters, or who, without specific mention, are worthy of consideration, or who have not been called and heard, and for which reasons these present letters have been issued, if the causes have not been sufficiently presented, verified, and justified, or from any other cause, even if it is of a legal or privileged nature, and even under the guise of a closed legal process, shall never, at any time, be challenged, infringed, revoked, brought into controversy, or reduced to legal terms, or against which any other legal remedy of restitution or otherwise shall be attempted or obtained; but rather, these present letters shall always exist and remain firm, valid, and effective, obtaining their full and complete effect, regardless of any legal or factual defects that might oppose them in order to prevent or hinder their execution in any way or for any reason; and therefore, rejecting all obstacles completely, they must be inviolably observed by those to whom they apply, and for all time to come; and thus, and in no other way, must these matters be judged and decided by any ordinary or delegated judges, and shall be null and void if anyone, knowingly or unknowingly, should attempt to alter them in any way.

(1) In Bede, Historia Ecclesiastica, Anglorum, II, 29.

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(2) Philippians II, 2. Acta Sanctorum, Tom. XIII, fase. CLV, 82.

[*Latin ed. p. 498*]

498. Notwithstanding the foregoing, and to the extent that this document is Our rule and that of the Apostolic Chancery regarding the matter of law, without invalidating it, and also other Apostolic constitutions and ordinances, as well as those of any Orders, Congregations, Institutes, and Societies, even of the Society of Jesus, and of any churches or other entities, even if confirmed by oath, by Apostolic confirmation, or by any other means, and also regarding any statutes and customs, even those of long standing, as well as privileges, indulgences, and Apostolic letters of any kind, granted, issued, and enacted in opposition to the foregoing, and even if repeated many times. With respect to all and each of these, even if a special form were to be observed for their derogation, We declare that, for the effect of the foregoing, these present documents are to be considered fully and sufficiently expressed, and that all other contrary provisions are hereby expressly repealed. Furthermore, whenever copies of these present letters are published in England, We decree that immediately after such publication, all and each of those to whom they pertain or shall pertain in the future shall be affected thereby, as if each of them had been personally notified and informed. Therefore, no human being shall be permitted to infringe upon this page of Our decisions, declarations, decrees, precepts, and will, or to dare to contradict it with reckless audacity. If anyone should presume to attempt this, let them know that they will incur the indignation of the Almighty God and of the Blessed Apostles Peter and Paul. Given at Rome, at St. Peter's, in the year of the Incarnation of the Lord, one thousand eight hundred and eighty-one, on the eighth day before the Kalends of May, in the fourth year of Our Pontificate.

C. CARD. SACCONI, Pro-Datary.

T. CARD. MERTEL.

Approved by:

DE CURIA, I. DE AQUILA, and the Vice-Comites.

Place of origin: Plumbi Reg. Jn Secret.

I. CUGNONIUS.

[*Latin ed. p. 499*]

499 FROM THE CONSISTORY ACTS Concerning the Consistory held on May 13, 1881. The Most Holy Father this morning proposed the following sees:

THE METROPOLITAN CHURCH OF SAINT SALVATOR in Brasiliae,

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vacant due to the death of August Anthony Vincentini, formerly Bishop of Conversam. The late Joachim Gonçalves de Azevedo, the last Archbishop of that see, having died outside of Rome, with the favor of the Reverend Father Dominic Aloysius Anthony dos Santos, formerly Bishop of Fortaleza, for presentation to the Most Serene Emperor of Brasiliae.

THE CATHEDRAL CHURCH OF CONCORDIEN, vacant due to the resignation of the Metropolitan Church.

THE METROPOLITAN CHURCH OF CAMERACEN, vacant due to the death of the Reverend Father Renato Francis, formerly Cardinal of the Holy Roman Church. The late Archbishop Régnier, having died outside of Rome, with the favor of the Reverend Father Alfred Duquesnay, formerly Bishop of Limoges, for nomination by the most illustrious man, Julius Grevy, President of the French Republic.

THE METROPOLITAN CHURCH OF CAMBERIEN, vacant due to the death of the Reverend Father Peter Anastasius Pichenot, the late Archbishop, having died outside of Rome, with the favor of the Reverend Father Francis Salesius Albert Leuillieüx, formerly Bishop of Carcassonne, for nomination by the most illustrious man, Julius Grevy, President of the French Republic.

THE CHURCH OF AQUILAN, which was adorned with the archiepiscopal honor by the Most Holy Father Pius IX through Apostolic Letters, "with supreme disposition," dispatched on the nineteenth day of January of the year 1876, and now vacant due to the death of the Reverend Father Aloysius Filippi, the late Archbishop, having died outside of Rome, with the favor of the Reverend Father Peter Cappellai, who willingly and freely completed the process in the hands of His Holiness, and was admitted by the same, with the favor of the Reverend Father Francis, of the Order of Preachers of Ross, who was born of legitimate, Catholic, and honest parents in Bologna, and has reached the fifty-second year of his age.

THE CATHEDRAL CHURCH OF LIPA-REN, vacant due to the death of the Reverend Father Louis, the late Bishop, having died outside of Rome, with the favor of the Reverend Father Mariano Palermo, a priest of the archdiocese of Catania, who was born of legitimate, Catholic, and honest parents in the town of Malecti, in the archdiocese of Catania, and has reached the fifty-sixth year of his age. He served as a pastor and vicarious forane in his native town, and worked wonderfully in the construction of a new and beautiful parish church.

THE CATHEDRAL CHURCH OF VAPINCEN, vacant due to the death of the Reverend Father Louis Maria Roche, the late Bishop, having died outside of Rome, with the favor of the Reverend Father John Baptist Simon Jacquenet, a priest of the archdiocese of Besançon, for nomination by the most illustrious man, Julius Grevy, President of the French Republic.

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The former Archbishop of Rheims.

[*Latin ed. p. 500*]

Having served in various secretarial roles, and having fulfilled the duties of a consultant concerning dogmatic matters at the Vatican Ecumenical Council, having been honored with the title of Apostolic Protonotary, and having resigned from his position as Parish Priest of the Church of Saint James in Rheims, in the city of Paris, the following appointments have been made:

The Cathedral Church of Carcassonne, vacant, has been assigned to the Reverend Father Dominic Francis Salesius Albert Leuillieux, for service in the Metropolitan See of Chambéry, with the favor of the Reverend Father Felix Arsenius Billard, a priest of the Archdiocese of Rouen, at the nomination of the Most Illustrious Man, Julius Grevy, President of the French Republic. Reverend Father Felix Arsenius Billard, born of legitimate, Catholic, and honorable parents in the place commonly called Saint-Valery-en-Caux, in the Archdiocese of Rouen, having reached his fifty-second year, has been appointed Canon Theologus in the Metropolitan Church, and until now has served as General Vicar for Spiritual Affairs for the Archdiocese of Rouen.

The Cathedral Church of Limoges, vacant, has been assigned to the Reverend Father Alfred Duquesnay, for service in the Metropolitan See of Cambray, with the favor of the Reverend Father Peter Henry Lamazou, a priest of the Diocese of Bayonne, at the nomination of the Most Illustrious Man, Julius Grevy, President of the French Republic. He has served as Vicar in the parishes of Saint Sulpice and Saint Mary Magdalene in Paris, defending the rights of the Holy Apostolic See, and having rescued the Church of Saint Mary Magdalene from sacrilegious acts. He has also resigned from his position as Parish Priest at the Church of the Blessed Virgin Mary in Antony, in Auteuil, where he oversaw the construction of a new church.

The Cathedral Church of Apamié, vacant, due to the death of the Most Reverend John Anthony Augustus Beiaval, the last Bishop of that See, outside the Roman Curia, has been assigned, with the favor of the Reverend Father Peter Eugene Rougerie, a priest of the Diocese of Limoges, at the nomination of the Most Illustrious Man, Julius Grevy, President of the French Republic. He has served as Parish Priest of Saint Julian in the town of Mochechouart, in the same Diocese.

The Cathedral Church of Saint Dionysius, vacant, due to the voluntary resignation of the Reverend Father Dominic Clement Soulé, who freely relinquished his position at the request of His Holiness, and was accepted by the same, with the favor of the Reverend Father Joseph Coldefy, a priest of the Diocese of Cahors, at the nomination of the Most Illustrious Man, Julius Grevy, President of the French Republic. He has served as Vicar in several parishes, and until now has been Parish Priest of Our Lady of

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Thiviers, in the Diocese of Périgueux.

The Cathedral Church of Constantine, vacant, due to the death of the Most Reverend Francis Charles Mary Gillard, the last Bishop of that See, outside the Roman Curia, has been assigned, with the favor of the Reverend Father Bartholomew Clement Bombes, a priest of the Diocese of Carcassonne, at the nomination of the Most Illustrious Man, Julius Grevy, President of the French Republic. He has served in the care of souls as Parish Priest, and having been elected Archpriest of Algiers by the Secretariate, he has resigned from his position as titular Canon of the Metropolitan Church of Caesarea, and as General Vicar for Spiritual Affairs for that Archdiocese.

(1) (1) In the following section, we will present the remaining proposals.

[*Latin ed. p. 501*]

601 FROM THE HOLY CONGREGATION FOR NULLITY OF MARRIAGES, April 24, 1880. SUMMARY OF THE CASE. The Archbishop had received, in writing, a denunciation in October of the year 1878, in which Aloysius, a parish priest of a certain town, was accused of three crimes: namely, sorcery, sodomy, and fraud. The accusations were supported by documents, that is, letters written by the accusers themselves, public instruments, and witnesses. There were proofs of the frauds committed against the entire population, as well as evidence of sorcery; but there was no definitive proof of sodomy, although serious suspicions existed. Since the accusers threatened to bring the matter before secular judges, the Archbishop, in order to restrain their anger and preserve the documents, deemed it appropriate to initiate a regular process, delegating the matter to certain Canons of the Cathedral Chapter: the Archpriest, the Penitentiary, and the Theologian, with the necessary and appropriate powers. The sorcery consisted in the fact that Aloysius had gone to the city of N. to see a certain Nicholas, his magical friend, with whom he had spoken about extracting treasures from the interior of Mount S. B. with the help of spirits, and that he had written letters to certain faithful of his parish, urging them to have faith in magic, and indicating the means and supplies necessary for the evocation of spirits. The sodomy was almost proven by witnesses who testified that they had witnessed it. The fraud consisted in the fact that certain individuals X had appropriated property belonging to the Community.

[*Latin ed. p. 502*]

502. OF THE RENUNCIATION OF OFFICE. The Reverend Aloysius had procured the grazing rights for the pastures of the parish of Saint Blaise, having agreed to a fixed payment, with a guarantor, who was a relative of the Syndic. However, when X failed to pay the pension, he was brought to court by the Municipality, and the sentence for execution was already imminent, whereby the Municipality would expose X's own property to

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auction. Then, Aloysius purchased these very properties through a simulated contract, and subsequently sold them to the daughters of X, the debtor. Thus, the Municipality was deprived of the means by which it could recover the pension, and the guarantor, along with the entire population, was forced to make up the deficient sums. As a result of this action, the entire population turned against him. The situation had reached such a point that he faced three counts of accusation in the proceedings, when the delegated judges, in consultation with the Archbishop, approached Aloysius and showed him that he would be subjected to the most serious canonical penalties if the proceedings were brought to a conclusion, and they advised him that it would be more fitting for his own reputation, as well as for the benefit of the Church and the citizens of Saint Blaise, if he sent a message to the parish, renouncing his office. The advice pleased the parish priest, and on the morning of January 21, 1879, he presented a written renunciation to the Ordinary, worded as follows: "Considering my advanced age, and knowing well that I am a Jonah whose presence causes a storm, I cast myself into the sea, and by this act, I send a message to the Archpresbyteral parish of Saint Blaise, entrusting the charity of the Church with the remembrance of the benefits and expenses that I have conferred upon this parish, and I beg the ecclesiastical authority, if I am at fault, to mitigate the penalties; spontaneously, etc." This renunciation was immediately accepted by the Ordinary, who wrote at the bottom of the authentic copy: "We attest to the truth of the matters presented, we accept his resignation and renunciation, and we order that it be published through our Curia. We wish that the aforementioned Reverend Aloysius continue to serve the Church in spiritual and temporal matters, until such time as We provide for a suitable administrator." This very resignation and renunciation was confirmed on...

[*Latin ed. p. 503*]

NULLITATIS RENUNTIATIONIS 503 and following. On that day, having written it again on a sealed (commonly called "bolled") sheet of paper, he went to the Archbishop, intending to receive suitable instructions. After two days, he unexpectedly appeared before the Archbishop, vehemently demanding the return of the sheet of renunciation: but, having been convinced a second and third time by the Archbishop's words, realizing that only one, the final, act of renunciation remained, he returned to the town of Montis S., B. Upon arriving there, he sent letters requesting the revocation of the renunciation: and finally, through the intervention of a civil official, he sent a formal declaration to the Archbishop, in which he declared: that he retracted and that he had no renunciation in the hands of his Archbishop; and that he wished to remain in the office of Archpriest Parochian. This declaration had no effect on the Ordinary: and on the 18th of that month, after the publication of notices to that effect, Aloysius pub-

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licly announced his renunciation. Then, with a new declaration, Aloysius appealed to the S. C. (Sacra Congregatio), stating that he had issued the renunciation only under duress. After prayers for information were sent to the Archbishop, he initiated a process for suspension: and upon receiving the information, the S. C. replied, "Let the proofs asserted by the appellant of coercion be presented." Instead of presenting proofs, the appellant submitted a new petition, in which he asserted that he could present no other proofs than the testimonies of witnesses, whom he indicated. And the S. C., on June 28, 1879, ordered the examination of these witnesses to be held in the Archiepiscopal Court, as stated in the document. - To the Archbishop, for information and a vote; to proceed with the examination of the aforementioned witnesses regarding the asserted coercion, and to inform the S. C. of the results. After the examination of the witnesses was concluded, the cause was presented for judgment to the Fathers of the Emorum Order. A Synopsis of the Discussion: It is clear in law (so he argued) that a renunciation of any benefice, if issued not freely and spontaneously, but out of fear, has no validity and produces no effect. Cap. Ad aures, de Renuntiat. Cap. Abbas, and Cap. ad QUAE ALOYSIUS ALLEGARET.

[*Latin ed. p. 504*]

504. Regarding the hearing concerning the declaration of nullity. Concerning those matters which are brought about by fear and coercion. Chapter 12 of *De Elect.*, verse 6. St. Clement. Many authors have written on the matter of declarations, number 7 and references thereto. Also, Chapter *Ad audientiam*, number Rufinus, on benefits, chapter 49, numbers 5 and 6, and many others. However, in the case of Aloysius, the declaration was not freely and spontaneously made, but was produced under fear. Therefore, it has no validity. Indeed, in the case of a parish priest who had been sixty years of age, suffering from a nervous disorder, and who, according to notes presented to the Curia by his adversaries, had been accused of the most serious crimes, which carried with them the most severe penalties, and who had been urged by the judges themselves to send a message to the parish priest in order to avoid greater evils, and where the accusers and witnesses were known to be the most bitter enemies of the parish priest. Furthermore, it was revealed through the examination of witnesses that Aloysius, as if being led to his death, had visited the Curia C. in order to sign the proposed declaration. Moreover, the Archbishop himself did not deny in his informative letters that the declaration had been made "under the impression of a certain fear, which was not unjustly felt, but was reasonably produced by the fear of greater evils." It is more serious, (the allegation continued), that he who was the head and instigator of the accusers had declared in writing that he had acted with malice in slandering the parish priest, and that the disturbance in the families could only be attributed to the actions of Aloysius. As for the divination, nothing can be

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made from the letters. For those which the magician wrote demonstrate rather that he was engaged in astrology, than in performing divination. Aloysius never gave credence to such things: and if at any time he agreed to write something, it was for amusement and to please his friends, rather than to be a helper to the magician, or to enter into partnership with him. Therefore, even setting aside the fear, since the crimes with which he was accused are reduced to pure fantasy, the declaration must not be considered valid, because it lacks a cause. As the theologian Parisio states in *De Résignât*, book 5, question 1, paragraphs 2 and following, it is the common opinion of the Doctors that a cause is required for a declaration.

[*Latin ed. p. 505*]

NULLITATIS RENUNTIATIONIS 505. QUAE ARCHEPISTOPUS OPPONERET. Patronus eius duos puncta demonstrare conabatur: 1. renuntiationem esse validissimam; 2. dato et non concesso vitio renuntiationis, Aloysium talem esse parochum, quem cura privare oportebat.

Primam partem incipiebat proponens, tria in iure requiri ad validitatem cuiusvis resignationis: 1. Causam resignationis. 2. Actum. 3. Acceptationem. Causam resignationis necessariam esse ex Constitutione Pii V, *Fel. Rec.*, quae incipit *Quanta Ecclesiae*, § 3, quaeque se refert ad aliam constitutionem Pontificis Innocentii III de dimittendis Cathedralibus Ecclesiis. In hac postrema, causas omnes resignationum enumerari contentas duobus illis versiculis: *Debilis, ignarus, male conscius, irregularis, quem mala plebs odit, dans scandala cedere possit.*

His praeactis, addiebat: duplex in Aloysio renuntiationis causa reperitur: erat enim male conscius, et eumque plebs oderat. Ex processu actis constare ipsum societatem inivisse cum praestigiatore magico Nicolao, cumque aliis quorum plerique de eius grege erant, ad thesauros e montis cuiusdam visceribus trahendos. Haec non tam ex testibus, quam ex litteris ab eodem conscriptis eruuntur. Ipse enim dum in N. civitatem se contulisset ut Nicolaum alloqueretur, inde litteras ad consocios scribebat quibus omnia ad spirituum evocationem necessaria describebat. Cum autem inter cetera quae paranda erant, etiam non indifferens pecuniae vis indicaretur, cumque Aloysius protestatus esset in suo examine, se nunquam spirituum evocationibus fidem praestitisse, incertum manet num revera se sortilegio immiscuerit, vel particeps fuerit fraudis a magico paratae ad crédulos decipiendos, et pecuniam ab ipsis extorquendam. Utrumque, aiebat Archiepiscopi defensor, sacerdote, et praesertim parocho indignum.

Nec minus certum est, prosequebatur, plebis odium in se ipsum excitasse, ob fraudes quibus operam dedit ut X bona servarentur, quae ob non solutas herbarum pensiones veni expositurum erat Municipium Montis S. B. Factum huiusmodi in omnium civium damnum recidit, qui eo maioribus subiiciebantur vectigalibus, quo subtiliores reditus exigebantur. Praecipue

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vero dam-

[*Latin ed. p. 506*]

506 The nullity of the resignation: Did that relative of Syndius, who had given surety for X, understand the matter? These two points, while demonstrating that he considered Aloysius to be unaware and ill-advised, presented two reasons, each of the most serious kind, for the validity of the resignation, even setting aside the infamous crime of sodomy, of which there was evidence in the proceedings. The existence of the act of resignation is not denied by Aloysius himself, indeed, he implicitly admits it, since he requests that the resignation be revoked. Moreover, the acceptance of the resignation by the Ordinary is not called into question. Given these circumstances, it was concluded that the resignation was valid. It was stated that Aloysius had sent a messenger to the parish under the threat of serious consequences: and he responded: that upon examining the time of the resignation, nothing was found that would demonstrate the existence of such a threat, from which a nullity might arise. Indeed, as the proceedings were nearing their conclusion, and as the necessity of punishing Aloysius with very severe canonical penalties was foreseen, the delegated judges spoke of the resignation as if it were the ultimate and only means of salvation, and Aloysius embraced the course of action that seemed most beneficial to him in all respects. Therefore, the reason for avoiding punishment was what prompted Aloysius to resign: and the fear that arose from the danger of punishment is external, and therefore does not invalidate the act. The existence of such fear, which would not have allowed Aloysius to give his free consent, is excluded both by the facts of the case and by the testimony of witnesses. For Aloysius, not once, but twice, submitted the resignation in writing, and he made all arrangements with the Archbishop regarding the administration of the parish's finances, until the appointed day. Furthermore, the witnesses either did not see him on the day he submitted the resignation, or they did not observe any apparent mental derangement in him. In this matter, the lawyer cited a similar case concerning the validity of a resignation, which was heard before the S. Congregation on April 30, 1869, and reported in this very journal, Volume IV, page 596, and also...

[*Latin ed. p. 507*]

NULLITY OF RENUNCIATION 507: The cause to which the title "Roman Nullity of Renunciation" refers, which was heard before the same Sacred Congregation on August 24, 1878: and it was requested that the disposition of Chapter III concerning restrictions, limitations, and Chapter Certain, number 12, concerning renunciations, be applied to the case. In the second part of the allegations, with the same circumstances attached to them that were opposed to Aloysius, it was demonstrated: that even if no

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renunciation existed, he was unworthy to continue in the office of parish priest. After these matters had been discussed in this way, the question to be resolved was presented to the Most Eminent Fathers through a doubt: "Does it follow that the renunciation is null in this case?" RESOLUTION. The Most Eminent Fathers of the Sacred Congregation, having held full meetings on April 24, 1880, gave a negative response, and with the following understanding: that it should be written to the Archbishop to provide the priest with a suitable pension. FROM THESE, THE FOLLOWING ARE DEDUCED: I. Sorcery, sodomy, and such frauds are vices in a parish priest that in no way can be tolerated by Ordinaries. II. Nevertheless, even if there are proofs of faults admitted in the hands of the Ordinary, it is not permissible to proceed to the permanent removal of the titular parish priest without a formal process. III. A bad conscience and the hatred of the people are among the most important reasons for giving a resignation. IV. A resignation, which is offered to avoid greater evils, and is accepted by him, cannot be considered null, as fear in this case is external, not internal. V. In this case, considering the priest's advanced age, and also the lack of a supplementary process, the Sacred Congregation has benevolently decided that he should be provided with a suitable pension for his needs.

[*Latin ed. p. 508*]

DOCTRINES OF THE CHRISTIAN RELIGION. On September 20, 1879, and January 29, 1881. The Bishop, desiring to promote the religious instruction of the flock entrusted to him, and especially of the rural population, on August 2, 1877, issued circular letters during the pastoral visitation, by which he ordered that the people be instructed in the fundamentals of the Christian doctrine. The Bishop declared that in all churches and public chapels where Mass is celebrated on days of precept, the catechism must be taught. After two omissions, with a space of three months, the offending priests will immediately be suspended from celebrating Mass for five days. Since the Bishop foresaw that such a decree might lead to false interpretations, he again ordered that the Christian doctrine be taught in all churches or chapels, whether urban or rural, on feast days, after the Gospel of the first Mass. He also desired that in churches where several Masses are said, the catechism be taught at the first and last Mass; and that those who fail to comply should be subject to the penalty of suspension from Mass for three days. Finally, he declared that he intended to bind all diocesan priests, of whatever rank or dignity, including Vicars Forane, Canons, and other dignitaries, by this ordinance. The Cathedral Chapter refused to obey this decree, alleging that it disturbed the order of the choral office; and declared that it would appeal to the Congregation of Holy Councils, because the Bishop had exceeded the limits of his authority. The rectors of several confraternities also petitioned the Holy Council concerning this decree, alleging that, as a result of it, their churches were virtually

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abandoned. When questioned about this matter, the Bishop stated that the prayers recited by the Canons were not in conformity with the truth; and that the confraternities were now proceeding in such a way as to completely disregard the authority of the Bishop, and no longer render an account of the administration of their goods. SUMMARY OF THE FACTS.

[*Latin ed. p. 509*]

DOCTRINES OF THE CHRISTIAN FAITH: Synopsis 8 and 9. DEFENSE OF THE CHAPTER AND THE CONFRATERNITIES. The defender observes, first of all, that the patron of the Chapter of the Diocese of P. states that the people of the Diocese do not suffer from such crass and general ignorance in matters of religion that they are entirely ignorant of what is necessary for salvation, and indeed, that they do not even know how to make the Sign of the Cross, as the Ordinary reports. Furthermore, the Bishop himself, having attended the catechetical instruction in the church of St. Augustine in the city, has noted that the boys and girls are properly instructed in the Christian doctrine; but he has also observed that the adults do not know it, because they are not admitted to the Sacrament of Matrimony unless they receive from the Parish Priest a certificate, to be presented to the Episcopal Curia, that they have been instructed in the Christian faith. The defender merely notes that these people are learning the Christian doctrine according to the method of the Venerable Cardinal Bellarmine, as is commonly done in Italy, and not according to the method prescribed by the Bishop. Therefore, since the foundation of the Episcopal decree is overturned, it necessarily follows that the decree itself is corrupt, since this instruction can and should be conveniently provided by the Parish Priests, and by other persons appointed to parochial duties, and certainly not by the entire clergy. However, even if it were conceded that the entire people suffer from crass ignorance regarding the fundamentals of the faith, it does not follow that the entire clergy can be obligated to teach the Christian doctrine to the people. The canons of the Church, and especially the Council of Trent in Session 23, chapter 18, and in Session 24, chapter 7, on the Reform concerning religious instruction, impose upon the Bishop, the Parish Priests, and other priests appointed to parochial duties, the exclusive right and obligation to insist upon such instruction. Therefore, it is the duty of the Bishop to paternally and effectively exhort the Parish Priests and other priests appointed to parochial duties, and if that is not sufficient, even to impose severe penalties to compel them to fulfill their duty. And indeed, it is stated that there are so many Parish Priests, as well as other priests dedicated to parochial duties in the Diocese of P., especially in the Cathedral city and in the suburbs, that there are enough and more than enough to provide religious instruction to the

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entire people.

[*Latin ed. p. 510*]

DOCTRINES OF THE CHRISTIAN RELIGION: It is added that, if at times, due to the number of the people, there are insufficient parish priests to carry out this sacred work, then simple priests are by no means to be compelled to do so, but, according to the Constitution of Benedict XIV: "Although, on the 7th of February, 1742, clerical assistants, teachers and mistresses of schools, and other pious laypersons and sodalities instituted for this purpose are granted, in the only case in which a Bishop may impose the duty of teaching the Christian doctrine upon a priest, as Benedict XIV speaks of in the aforementioned Constitution, is when Mass is celebrated on feast days in rural churches, far from the parish church, so that the people in those churches are not deprived of catechetical instruction. But when some Bishops, confident in the authority of this Constitution, have wished to impose this duty upon priests in any church, under pain of suspension, the Sacred Congregation has, on several occasions, especially on the 10th of December, 1757, and on the 18th of February, 1758, responded: 'The edict of the Bishop is to be maintained, as far as rural churches are concerned, but the penalty of suspension is to be removed.' It is stated that the matter concerns the obligation of teaching the Christian doctrine, imposed upon the canons of the Cathedral Church, who, due to the importance of the benefice, accede to positions of authority, as expressly stated in the Glossary in Chapter 11 concerning Rescripts in VI. And this is prescribed not in any rural church far from the parish church and with a large gathering of the people, but in the very Cathedral Church, not increased by the number of the people, but almost deserted, in which the same Bishop finds it difficult to give sermons to the people, because, except for the clergy, hardly one or two laypersons are present. Finally, it should not be overlooked that the previously mentioned method of teaching catechism has been found to be quite ineffective. Indeed, the Sacred Congregation for the Affairs of Bishops and Regular Canons, on the 16th of January, 1590, decreed the following: "It is not pleasing that the Christian doctrine be read during the solemnities of Mass, but that, after the ringing of the bell, boys be gathered together after dinner, before Vespers, and that it be recited through dialogue." This, it is said, is observed in all dioceses and in this venerable city. Therefore, His Eminence and Lordships are confident that the first proposition will be dismissed with a negative response.

[*Latin ed. p. 511*]

The Priors of the Christian Congregations, in truth, first complain about those things which the Bishop had presented to the Sacred Congregation concerning them, declaring that all the members are sincere Catholics, and that they observe all the rules of their own institution, and that they have

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always followed the precepts of the Bishop, and that they have been compelled to render an account of the administration of goods to a council, commonly called the pious work, as the law, which still prevails in the Kingdom of Naples, demanded. Then, addressing the matter, they report that the decrees issued are more harmful than useful to the inhabitants; indeed, more people abstain from fulfilling the Sunday precept, and this, and also for this reason, the Congregations themselves find it more difficult to find a priest. Therefore, they conclude that the law ought to be carried out for the building up, and not for the destruction, of souls, and that, since the decrees issued by the Bishop turn to the detriment of souls and of the Congregations, the priests of those Congregations, like a stream flowing into a valley, cannot be obliged to read the doctrine of Christianity, when they are to celebrate Mass together with the members of the Congregations.

DEFENSE OF THE BISHOP.

Thus far, the Bishop has opposed the statements made by the parties involved, and he again recalls the ignorance in the fundamentals of the faith among the people of that Diocese, due to the negligence of the parish priests, with a few exceptions, in neglecting for many years the sacred instruction and the explanation of the Gospel; and he adds that it has been his pastoral care to apply effective remedies to avert so much evil. He also affirms that the method chosen by him is useful, not only because it has been proven effective in other Dioceses, but also because it has been observed to be effective up to now in the Diocese of P. Indeed, the people listen attentively to the said explanations, as the priests of the Congregations themselves testify. He also states that he can compel any priests to give sacred instruction, even during the celebration of Mass, according to the Roman Synod of the year 1725, session iii, chapter 5. For it is of the utmost importance that the faithful be instructed in the fundamentals of the faith, for which the works of the Bishop and the parish priests are often insufficient. Finally, he adds that all bitterness on this matter should be removed, if one considers the most wise response issued by the Sacred Congregation in Ci-

[*Latin ed. p. 512*]

1512 DOCTRINAE CHRISTIANAE vitatis, Castellammare, 25 September 1762, question 2, reported by Zamboni in his Collection, Canon Law, § 6, number 86 – there – "The Canons of the Collegiate Church of the land of Stabiae, when celebrating the first Mass under the aurora, are obligated to teach the principal mysteries of the faith, so that the decree issued by the Bishop, on the occasion of a visitation, must be observed." Similarly, a decree concerning religious men was found in Ugentina, on the day of March 2, 1861, during the visitation of the Most Holy Lords. There, a pre-

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cept was enacted in the Diocesan Synod, concerning the teaching of Christian doctrine on Sundays and other feast days, during the first Mass, in all churches and public oratories, after the Gospel, in a clear and understandable voice, with the priest preceding the words verbatim, and the people reciting them along with him. Furthermore, since it seemed that the Regular clergy would not be bound by such a mandate, being exempt from the jurisdiction of the Bishop, the following questions were raised: "Whether the Regular clergy are obligated to observe the aforementioned statute in their churches, by force of the Synodal law in this case – and, to the contrary – Whether they can be compelled to do so by the Bishop, acting as a delegate of the Apostolic See; to which the most learned were given the following response: 'To both questions, in the case in question, the mandate of the Bishop must be observed.' And if no penalty was prescribed in the Synod against those who neglect the aforementioned precept, nevertheless, this did not diminish the force of the decree promulgated by him, since it is within the power of the legislator to impose a sanction on the law, and he himself did this, so that the decree would not be easily disregarded, using a certain milder penalty than that which Pope Benedict XIII himself instilled in the aforementioned Roman Synod. Therefore, considering these and other matters, the following questions were put to the Most Eminent Fathers:

I. Whether the Canons of the Cathedral Church, when celebrating Mass, are obligated to recite the Christian doctrine, under penalty of suspension in this case.

II. Whether the priests celebrating Mass for the confraternities in said churches are obligated to do the same, under penalty of suspension in this case.

[*Latin ed. p. 513*]

DOCTRINE, CHRISTIAN M 3 RESOLUTION. The Sacred Congregation, on January 29, 1881, decided to respond as follows: "Regarding the first and second points, considering the particular circumstances, the Bishop should ensure that Christian doctrine is taught in the first and last Masses, according to the method of Bellarmine, so that it is repeated verbatim by the people, without interruption." FROM WHICH YOU MAY GATHER: I. From the Council of Trent, Session 5, chapter 2, it is the proper duty of Parish Priests to preach and instruct their parishioners in Christian doctrine, so that those who are negligent may be chosen and even punished with ecclesiastical penalties. II. Bishops, however, are to take care, according to the Council of Trent, Session 24, chapter 4, that in each parish, children are instructed, at least on Sundays and other festive days, in the rudiments of the faith, and in obedience to God and their parents, by those to whom this pertains. III. Therefore, the Sacred Congregation in its responses to Bishops always emphasizes to them that they should diligently encourage

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and constantly oversee the parish priests in the fulfillment of this duty. IV. However, experience has shown that the work of the parish priest is often insufficient, and therefore Bishops can compel clerics who aspire to be promoted to higher orders or to obtain ecclesiastical benefices to assist in this duty; thus, it is clear that the duty of teaching is not imposed only on the parish priest (1). V. The negligence of parish priests has been the cause of many problems. (1) The Roman Pontiffs have never ceased to strive to promote the institution of Christian doctrine. Specifically, this was done by St. Pius V, Gregory XIII, Clement VIII, and especially by Pius IX, as is evident in the Encyclical "Nostis quidem." In his Constitution "Etsi minime §. 6," Benedict XIV urges Bishops to encourage clerics who are to be promoted to higher orders, and priests who desire benefices, to assist the parish priests, "with very serious words (and with deeds that confirm the words)," stating that the Bishop will never "begin to inaugurate" those who are older or younger, especially those who have not been willing to contribute their efforts to the transmission of Christian doctrine to the parishes. He also declares, and gives assurance, that in granting the rights of parish and other benefices, he will give greater weight and importance to the zeal and diligence shown by clerics in this work.

[*Latin ed. p. 514*]

51 4 CONCERNING CHRISTIAN DOCTRINE: It is decreed that all priests who celebrate the first and last Mass in cathedrals, or in churches of confraternities, should strive to instruct the people in Christian doctrine, according to the method of Bellarmine (1), by order of IURIUM on April 24, 1880. In the year 1879, a dispute arose between the parish priest C. and the prior L. concerning parochial rights: for both were devoted to the care of souls. The prior, who presides over the parish of Saint George, maintained that the parish priest C. should pay him 125 florins annually, and that on each feast day of Saint George, he should offer a COMPENDIUM OF FACTS. (1) The immortal Pope Benedict XIV, "through a circular letter, in order that, beyond those things which are contained in the aforementioned Constitution, although they are not absolutely necessary for salvation, nor have the bishops exerted themselves to the utmost in fulfilling the obligation concerning them, the discourse will not stray, and the faithful should instruct the children in Christian doctrine, obeying the Apostolic precept (Romans 12:3), and to that end he proposes § 17, a book not more learned than is fitting," written by the Venerable Bellarmine and approved by the same Pope Clement VIII from a loving memory. The Roman Catechism, having been postponed by the historians, continues: "From these two evils have arisen; one, that there has been almost complete agreement in the same method of teaching; the other, that the multitude of catechisms brings a certain scandal, because they seem to offer themselves to the young, and in the land of a single lip, and of the same words; the

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other, that from various, and diverse methods of transmitting the Catholic truth, contentions and rivalries have arisen, and from emulation, while one calls himself an Apollo, another a Cephas, another a Paul, a follower of Paul, distinctions of souls, and great discord; the bitterness of this disagreement, we believe, is not conducive to the glory of God, nor to diminishing the evils, nor to extinguishing the fruits which it is fitting for the faithful to receive from Christian discipline." Therefore, Clement XIII, in the Constitution *Dominici Gregis*, §, indicated the reason, and presented the Roman Catechism to the pastors, saying: "Neither are the sheep led to pasture by crooked paths, nor are certain things, even the opinions of Catholic doctors, to be presented to them, but the entire body of doctrine, antiquity, and consensus must be transmitted. Furthermore, since the common people cannot ascend the mountain (Exodus 19:1) on which the glory of the Lord descends, and the boundaries will perish before our eyes, the boundaries must be established for the people by their teachers."

[*Latin ed. p. 515*]

SECTION 51.3: The pastor was obligated to attend Mass with singing in the parish church of the same rector. Moreover, the rector asserted that he had been granted the faculty to celebrate Mass with singing and to receive offerings from those present on the feast of the Assumption in the parish church of Father [P.]. Furthermore, whenever funerals were to be held, it had been stipulated that, if other priests were called, the rector of Saint George's, before all others, should be invited, and that he should be permitted to wear the stole in that case, and that payment and candles should be given to him, no differently than to the same rector. The rector asserted all of these things, referring to the document by which the parish church of Father [C.] was separated from the parish church of Saint George's on April 13, 1653, and was established as a parish. Since the matter could not be amicably resolved, the rector appealed to the episcopal court, which, after considering the arguments presented, issued a judgment favorable to the rector on July 23, 1879. This judgment was not to the liking of the pastor [C.], who, on August 3, immediately appealed to Saint [Prince], in whose intercession we rejoice, demanding that the same be renounced, as it was harmful to his rights and lacked any justification. The rector [L.] maintains that the episcopal court's judgment should be upheld, because he believes that the rights asserted by him are based on both written law and customary law. In the first place, the rector points out that the parish church of Father [C.] was separated from the parish church of Saint George's and established as a parish; however, under the condition that the pastor of the mother church should enjoy all the rights, as previously explained in the history of events. He concluded that this should be the case, based on the very words that are read in the document of separation. With these

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facts established, the rector stated that nothing is more in accordance with sound reason and the principles of both law than that pacts and agreements entered into should be observed properly and religiously. This is evident from argument 4 in the beginning of the title on pacts – THEREIN: THE RIGHTS OF THE RECTOR.

[*Latin ed. p. 516*]

516 OF RIGHTS: What is more fitting for human faith than to preserve what has been agreed upon among them? This is evident from the law, as in Canon 5 concerning obligations and acts. There, just as initially, each person has the free power to enter into or not enter into a contract, so no one can renounce an obligation once established, without the consent of the other party. However, civil law, with its sanctions, does not invalidate canon law, and this is especially evident from Rule 21 of the law in Book 6: "What has once pleased cannot displease any longer." This is confirmed by another rule of law: "No one can change his mind to the detriment of another." Rule 33 of the law in Book 6. And this is even more strongly the case in matters concerning burdensome contracts. Indeed, the dismemberment of the parish of Saint George was demanded by the Bishop for this reason, and in turn, the Church C was separated from the Mother Church and constituted as a parish, but with the condition and law added that the Rector of the parish of Saint George, in addition to the aforementioned annual payments and duties, should also have the right to receive the stole at funerals, to which he must be invited before all other priests, and to receive the customary payment and candle, just as the Rector of the Church C does. And this, of course, was done with good reason. Indeed, it was said that it is right that a new church should show due honor to the old parish church, as stated in Chapter 3, "Concerning the building or repairing of churches": "provided that due honor be given to the mother church according to the resources of the place." This kind of honor, according to the unanimous teaching of commentators, either consists in the annual payment, regulated by the Bishop's discretion, or in other rights reserved to the mother church by the Bishop, in accordance with the decree by which the new parish was established. Hence, Fagnanus, commenting on the aforementioned chapter 3, section 10, states: "Therefore," except for patronage and due honor, "the rights of subjection are not due to the mother church, unless the Bishop has reserved those rights for him at the very beginning of the establishment." This is made even clearer today after the Council of Trent, Chapter 4, Session 21.

[*Latin ed. p. 517*]

517. If, therefore, the Bishop decreed at the very beginning of the establishment that the Prefect L. should be invited to funerals before all other priests, and should be given precedence over them; if he decreed secondly

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that the Prefect himself should be permitted to wear the stole; and if he decreed finally that the same Prefect should receive wages and candles, no differently than the Rector C. received them; the Parish Priest C. asserts that, of his own accord, he has always performed all these things in the presence of the Bishop, with the consent of both parish priests, as they had agreed upon. However, after a brief consideration that the words of the decree issued by the Bishop at the time of the establishment are somewhat ambiguous and, consequently, require interpretation, the Prefect states that such an interpretation must be carried out according to the custom that has been established in this matter for a long time. Indeed, it is a well-known axiom of law: "Custom is the best interpreter of laws." Especially since, in this matter, the entire force is derived from observance, as Tradition teaches (cf. S. Rota, decision 55, n. 45, vol. 1, and elsewhere). Therefore, the Prefect states, custom, in cases of doubt, favors the flourishing of the maternal jurisdiction of the Church; for the rights in question have always been preserved with the favor of this maternal jurisdiction, and their exercise enjoys a prescription of more than a secular duration. The Prefect attempts to demonstrate this with numerous witnesses. Given these facts, it should be clear to no one what the effects and the force of a custom, especially a centennial or immemorial custom, are. Indeed, it is clear that a centennial or immemorial custom provides a presumption of any title, as can be seen from leg. 2 pr. ff. de aqua et aqu. pluvia, part 4, 3 and 7; from leg. 33 p. 2 ff. ibid.; from leg. ff. de divers. tempor. praescriptioni!; and finally, from lib. 2 tit. 13, Cap. 4 de praescript. in 6. These principles of both jurisdictions are consistent with Murga, Commentary on Constitutions, 8, n. 46; Pignatelli, vol. consultat. 3, n. 4; Lotter, de re benefic., lib. 4, quaest. 22, n. 223; and Amostaz, de Caus. Piis, lib. 5, cap. 42, n. 44. Furthermore, it is possible to elicit full and perfect proof of such a centennial or immemorial custom from witnesses.

[*Latin ed. p. 518*]

818 The rights are demonstrated by law. 28 ff. concerning proofs, the law. 2§.8ff. concerning water, etc., and the practice of the Sacred Roman Rota, throughout, especially in decisions 933, no. 49, and 20 cor. Ansaldo. From these matters, both in law and in fact, which have been considered up to now, it becomes clear that the rights of the mother church of St. George are vindicated, not only by written law, but also by custom; and it also results that the aforementioned mother church has enjoyed these rights from a time which they call "unmemorable," or from the very decree of dismemberment itself; therefore, it seems to follow that the church of St. George, since it possesses the right of being a mother church, ought to be maintained in the exercise and possession of such rights; and therefore, the judgment of the Episcopal Curia, being complete in all respects, ought to be sustained and confirmed. THE RIGHTS OF PAROCHUS C. However, on

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the other hand, Parochus C. endeavors with all his might to demonstrate that the rights which the mother church claims, and which, with its favor, the Episcopal Curia has granted in the judgment it has pronounced, ought to be rejected from the very threshold of the judgment, because they are not founded on any valid basis. Indeed, the arguments presented by both Parochus L. and the Episcopal Curia in defense of such rights are based on the decree of dismemberment, or on written law and custom. Furthermore, Parochus C. urges that both should be disregarded. Concerning the decree of dismemberment, he asserts that it cannot have any validity, because it is contrary to the rules of canon law. Indeed, Alexander III, granting the dismemberment of an ancient parish to the Archbishop of Eboracum, ordered that due honor be given in that parish to the mother church, according to the possibilities of the place. Cap. ad audientiam 3, de Eccles. aedific. vel reparandis (Concerning the building or repairing of churches). This honor due to the mother church, as a sign of obedience and reverence, ought to be shown by the new parish, and consists, as all commentators on canon law unanimously state, in small offerings or in matters of little importance. Indeed, Fagnanus, in Cap. ad audientiam 3, de Eccl. aedif. vel reparan, no. 8, teaches concerning this matter: "That a church built within the limits of another parish ought to render some honor to the mother church."

[*Latin ed. p. 519*]

IURIUM 819 » namely, the annual tax, as a sign of subjection, argument, chapter. » Every soul, concerning taxes, see above; it must be regulated by the judgment of the Bishop, argument, C. concerning causes, see above, concerning offices, delegated, according to the gloss, here in the word "Honor," or "Dignities." Clerics of a newly erected Church must bear a greater burden for baptism, examination, chapter, and similar things, or they must fulfill those obligations which chapels owe to the mother church, as in 2 concerning chapels, of monks, etc. Concerning these matters of greater burden and obedience, according to Innocent and the ancient Abbots, in the word "Honor," Hostien, n. 3, in the word "Provide," John Andrew, n. 10, Butr., n. 12, Anchar, in 5 Notations, and Abbot, n. 6, or certainly, the burial ground will be reserved for the ancient Church, as in Cap. Transmissa, concerning prescriptions, and it is held by John Andrew, n. 10, and in Cap. Concerning the certification of burial. Fagnano discusses the choir, Ferraris, verb. dismemberment, article 44, n. 24. Concinit Moncelli in annotations. Erection of a new parish through dismemberment, form 424, n. 43, title 44, who furthermore adds to n. 14 in the theme: - there, "Which of these signs of honor the daughter church ought to contribute to the mother church, is left to the prudence of the Bishop in the dismemberment to be made, who, having considered the place, the church, the rector, the distance, the resources of the inhabitants, their morals, and qualities, will reserve one of the aforementioned things,

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as the Gloss notes in the said chapter, concerning the hearing, in the word "honor," without considering at all what is expressed in the formula, because that is only cited as an example." Since these things are so, it is not surprising that the Sacred Congregation, following the doctrine of the Doctors, in deciding on the dismemberment of parishes, has imposed on the daughter church, to be given to the rector, no burden on the mother church other than the payment of a moderate annual tax, or the offering of a small candle, or something similar. Therefore, if the burdens imposed on the daughter church by the Bishop, in the actual dismemberment, are far greater, and if these are so much in excess of the provisions of canon law and the practice of the Sacred Congregation, then the parish priest must clearly state this, so that they may be annulled with all due force. Indeed, it has been investigated that the Bishop is not able to impose anything that is contrary to the rules of common law, or that exceeds them. Furthermore, certain rights of the Prefect L. are imposed by the Bishop in Ii-

[*Latin ed. p. 520*]

820 The privileges granted are so exorbitant that, if they were to be held in honor, the freedom and independence of the Parish of C. would already have been nullified; indeed, the Rector of this Parish would be nothing more than a simple Vicar, or vice-parish priest, of the Church. All of these things, as they are so foreign to both the common law and the other prescriptions contained in the very decree of the Parish's erection, are easily perceived by anyone with understanding. Indeed, with regard to the common law, it is well known that new Churches must certainly render certain signs of reverence and obedience to the mother Church; but it is also clear that they are not bound by any bond of subjection to the mother Church. This is taught by Fagnanus, who in the aforementioned passage, number 9, states: "Furthermore, note that while the Gloss says that such honor is 'due to the ancient Church as a sign of subjection,' this reason is false and not proven by law, according to Abbot, number 8. Indeed, this text proves the opposite: for, while reserving the greater Church's patronage and the appropriate honor according to the circumstances of the place, it seems to deprive the ancient Church's Rector of power in other matters." If, however, we examine the words and spirit of the decree of erection, it becomes clear that the Church of C. was established as a true, absolute, and independent parish; and that its Rector is properly and truly a parish priest, that is, one who is established under no authority and is admitted to exercise all the rights and duties that any parish priest can and does exercise in his own parish. Therefore, since it is clearly stated in the decree of erection that certain rights were reserved to the Rector of the ancient Church, and these rights conflict with the pronouncements of pontifical law and with the laws stipulated in the act of erection itself, it seems that such a decree and the rights confirmed by it should not be held in honor. However, granted, but

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not conceded, that the Prelate L. must be maintained in possession of such rights, he insists that such rights can be exercised not in funerals, which can occur throughout the year, but only in those that occur on the single day of the Assumption of the Blessed Virgin into Heaven.

[*Latin ed. p. 521*]

Regarding point 821, concerning the height of evidence, it was demonstrated that it was possible to obtain a ruling based on the repeatedly mentioned decree of establishment. Furthermore, with regard to the custom invoked by the opposing party to defend disputed rights, the Parish Priest C. responded with three reasons. Firstly, he stated that such a custom, if it truly existed, should be entirely rejected, as it constitutes a corruption of the law, especially when the matter concerns parochial rights, which cannot be prescribed by custom. Secondly, he argued that the custom cannot be invoked in this matter, because the Parish Priest had the authority to wear the stole and cope at funerals, which were held in the parish of C. He reasoned that this was done not with the intention of establishing a custom that would have binding force, but rather out of a certain sense of courtesy or reciprocity. Finally, even admitting the opposing party's assumption regarding the custom, he concluded that the aforementioned custom loses its purpose in the present case, because it has been interrupted for many years by contrary actions, and nothing has been done to contradict it. With these points established both in fact and in law, the judgment was submitted to the Most Reverend Fathers to determine whether the opinion of the Episcopal Court should be upheld in this case. The Sacred Congregation, after deliberation on April 24, 1880, responded: "No, to the first part; yes, to the second."

RESOLUTION. FROM WHICH THE FOLLOWING ARE DERIVED:

I. In accordance with the spirit of the canons, it is not customary to impose heavy and unreasonable burdens on the daughter church with respect to the mother church, as Alexander III, the Archbishop of York, only granted that due honor be given to the mother church, according to the capacity of the place.

II. Regarding this matter, it is advisable to consult with canonists for a more thorough examination of the case.

[*Latin ed. p. 522*]

S22 Regarding the rights of churches, a filial church ought to render to its mother church a certain honor, namely a moderate annual assessment, as a sign of its subjection.

III. Of these signs of honor, what a filial church ought to render to its mother church is left to the prudence of the Bishop, to be determined in

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the act of dismemberment; who, having considered all things concerning the place, the church, the rector, the distance, the resources and customs of the inhabitants, will decide upon one [amount].

IV. It is therefore improper for Ordinaries to impose excessive burdens on a filial church in the act of dismemberment, because they would be acting contrary to common law, against which they possess no authority.

V. The relations between the mother church and the filial church should be such that, while preserving the greater patronage of the mother church and a fitting honor, the filial church is entirely released from the power of the ancient church's rector, and enjoys full freedom.

VI. The burdens imposed on a filial church in the act of dismemberment are contrary to the opinion of jurists and canonists: because they appear excessive, and are not supported by long-standing, uninterrupted custom; and because such burdens seem entirely to extinguish the freedom and independence of the new rector.

EXCARDINATION. On May 29, 1880, a cleric, R., of the Diocese of S., went to Naples in 1875, with the permission of his own Bishop, to devote himself diligently to his studies, especially theological studies. While living in that city, he had the desire to be admitted among the Neapolitan clergy for two main reasons: because his father, due to family hardships, had left his place of origin and moved his household to Naples; and because a pious person residing in Naples promised him a sacred patrimony, which he lacked, so that he might be able to enter the sacred orders, on the condition that he celebrate the sacred liturgy on feast days in his private oratory. But the matter was rejected.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 523*]

EXCARDINATIONIS 523 To the Prelate of the Diocese of St. [Name], letters of excardination are granted to him, indeed, urged by the supplication of Clericus, who presented a petition to the Sacred Congregation, so that, after due consideration, this grace may be granted to him by the fullness of power.

REASONS FOR REJECTING THE CLERIC'S PETITION ARE CONSIDERED. It is an established principle of law that anyone, whether by the title of origin or of domicile, is subject to that Bishop within whose diocese he was born, or where he has established his domicile for legal purposes. This is clearly demonstrated up to the highest degree of evidence by the Constitution of Innocent XII, which begins, "Speculatores domus Israel." It should be noted what the aforementioned Pontiff decreed regarding the title of origin: "A subject, by reason of origin, is only that person who has been naturally born in that diocese in which he desires to be promoted

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to the orders, provided that he was not born there by accident, that is, by reason of a journey, an office, a mission, commerce, or any other temporary stay, or permanence of his father in that place; in which case, not such a fortuitous birth, but only the true and natural origin of his father will be considered."

Regarding the title of domicile, the same Pontiff states in the aforementioned Constitution: "A subject, by reason of domicile, for the purpose of receiving orders, is considered to be only that person who, although born elsewhere, has so stably established himself in a certain place, either by residing there for at least ten years, or by transferring a greater part of his property and possessions, along with his household, to that place, and by residing there for a considerable time, and by clearly demonstrating his intention of permanently residing there, and nevertheless, in both cases, he must truly and actually have such an intention, as can be legally proven."

Having these principles of law established, the Archbishop of St. [Name] contends that Clericus R. belongs to his jurisdiction and power, because it is a fact that both he and his father were born in the city of St. [Name], and they have their domicile fixed there. However, the petitioner makes an unsuccessful appeal to the domicile of the Nea family.

[*Latin ed. p. 524*]

524 REGARDING THE QUESTION OF ECCLESIASTICAL EXCARCERATION: The Ordinary responds that the father of the cleric did not leave the place of his origin after his ordination, but only to pursue a temporary employment; and he still retains a house and property in his homeland, although burdened with debts. This, of course, does not reveal an intention to permanently reside in Naples, and is wrongly referred to as being in accordance with the Constitution of Innocent. However, even if it were true that the father had indeed established his permanent residence in Naples, the son can nevertheless independently retain his domicile in the place where he was born, since it is not required that the son follow the domicile of his father, as stated by law 3 and by law 4 ff. concerning Municipal matters: "It is also permissible for a member of a family to have a domicile, not where the father has it, but wherever he himself establishes his domicile." Furthermore, it appears that the son is obligated to maintain his domicile in the place where he was born, because, according to the Ordinary, the permission granted to the cleric to seek admission to the Neapolitan Lyceum was subject to the condition that, as the time of his ordination approached, he return to his native seminary, according to the laws and customs of the diocese. And, as the Prelate states, there are titles available in his diocese for the purpose of ordination; and this difficulty is wrongly raised. Finally, having considered all of these points, the Ordinary insists that the request for ecclesiastical excardination must be denied to the cleric, lest the decree of the Holy Council of Trent, Session XXIII, Chap-

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ter 46, concerning reforms against useless and wandering individuals, be rendered invalid. THE PRAYERS OF THE CLERIC SHOULD BE HEARD. ON THE OTHER HAND, it is known that, according to the aforementioned Constitution of Innocent XII, one can be subject to the Bishop in four ways, with respect to ordination, namely, by reason of origin, domicile, familiarity, and benefice, as Honoratus, in his practice as Cardinal Vicar, explains in detail. It is, in fact, not prohibited that someone, having left the Bishop of his origin, receive ordination from the Prelate of the place where he has established his domicile, as the cited author teaches in chapter 9, note 3. And, in truth, as concisely stated in L. 34 ff. concerning Municipal matters, there is nothing to prevent someone from transferring his domicile elsewhere; and, according to the common teaching of Canonists, clerics do not even require permission to transfer their domicile elsewhere.

[*Latin ed. p. 525*]

EXCARDINATIONIS 525 lium C. Abbas de Paroc. num. 1. Pax Jordan, elucubrai, lib. 3 L. 6 num. 56; Taurinen, adscriptionis seu incardinat. 25 Augusti 1877 §. Inutile exinde. (1) Quod autem Clerici post alibi contractum domicilium, ordines ab Episcopo domicilii possint recipere, praeter cit. Honorante, perbelle confirmatur etiam a Passerin. in Lib. de temporib. ordin, in 6 decretal, art. 2 num. 31 - ibi - « Nulla est limitatio per se et forma» liter admittenda, quod Episcopus ratione domicilii potest cle» ricum quemque ordinare et non prohibetur id facere ex lege » prohibente ordinare alienum subditum, quia Clericus quicum» que ratione domicilii acquisiti in Dioecesi, fit subditus eius » Episcopi. » Translato vero domicilio a Clerico ab una in aliam dioecesim videtur iurisdictio prioris Praesulis extincta, et secuta subiectio ditioni alterius iuxta text. in Can. ubicumque 13 q. 2 - ibi - « Item si quis de provincia ad Provinciam trans» ierit et ibi domicilium sibi collocaverit, liber factus a ditione » prioris Iudicis, iurisdictioni illius Iudicis subditur, in cuius » Provincia sedem sibi elegit C. Pit. Discept. 122 num. 17. » Hisce in iure praenotatis, in facto nihil obstare videtur quominus dicatur vere et realiter ab Oratore Neapoli domicilium esse contractum: eius enim pater nedum familiam et res suas ibi transtulit aedesque instruxit, sed etiam solemnem emisit declarationem, perpetuo fixam sedem retinendi, ad tramites Innocentianae Constitutionis, uti ex uteris informativis Praesulis Neapolitani constat. Quare hic recurrit applicanda doctrina memorati Honorante cit. cap. adnot. 2 « Si quis in aliena Dioecesi » sedem domicilii firmat, ipsumque sequitur filius, nondum eman» cipatus, iste filius ab Episcopo praedictae Dioecesis, ubi pater » domicilium contraxit, titulo domicilii poterit ad Ordines pro» moveri, quin filius expleat conditiones Innocentianae Consti» tu ti on is, dummodo pater eas in loco novi domicilii expleverit » et ita resolvit s. Congregatio Concilii in Materanen. Ordina» tionis mb die 4 Decembris 1706. » Posito autem quod Clerici R. pater stabile domicilium Neapoli fixerit, sponte veluti sua videtur fluere,

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quod immerito (1) Habes hanc quaestionem iam relatam Vol. X. 485.

Concerning the excommunication of 525 lium C., an abbot of a parish, number 1. Pax Jordan, in his writings, book 3, chapter 6, number 56; Taurinen, regarding assignment or incardination, August 25, 1877 §. It is unnecessary to proceed further. (1) Furthermore, that clerics, after establishing a domicile elsewhere, may receive orders from the bishop of that domicile, besides what was cited from Honorante, is also clearly confirmed by Passerin in his book on the times of ordination, in the 6th Decretal, article 2, number 31: "There is no limitation, either by itself or in form, that should be admitted, so that the bishop, by reason of domicile, can ordain any cleric, and he is not prohibited from doing so by law, prohibiting the ordination of a subject from another diocese, because any cleric, by reason of the domicile acquired in the diocese, becomes subject to that bishop." However, when a cleric transfers his domicile from one diocese to another, the jurisdiction of the former prelate seems to be extinguished, and the cleric is subject to the jurisdiction of the other, according to the text in Canon Law, everywhere, 13, question 2: "Also, if someone goes from one province to another and establishes his domicile there, he is freed from the jurisdiction of the former judge and is subject to the jurisdiction of that judge, in whose province he chooses to reside." C. Pit. Disputations, 122, number 17. With these things noted in law, nothing seems to prevent us from saying that the domicile was truly and really established by the orator of Naples: for his father, along with his family and possessions, moved there, built a house, but also issued a solemn declaration, permanently retaining his residence, according to the procedures of the Innocentian Constitution, as evidenced by the information from the Bishop of Naples. Therefore, the teaching of the aforementioned Honorante, cited in chapter 2, is applicable here: "If someone establishes a domicile in another diocese, and his son, who is not yet emancipated, follows him, that son may, by the title of domicile, be presented for ordination to the bishop of that diocese where the father established his domicile, provided that the son fulfills the conditions of the Innocentian Constitution, provided that the father fulfills them in the place of the new domicile," so decided the Sacred Congregation of the Council in Materana, regarding ordination, on December 4, 1706. Now, assuming that the father of the cleric R. has established a stable domicile in Naples, it seems to naturally follow that it is undeserved (1) You have already addressed this question in Volume X, page 485.

[*Latin ed. p. 526*]

526 The Archbishop of S. against the aforementioned Raphael brings forth a complaint, and accuses him of disobedience and reluctance in fulfilling his obligations. It seems entirely reasonable that a son, placed under paternal authority, should live where his father, along with the rest of the family, has chosen a permanent dwelling. Up to this point, the arguments

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presented provide the best testimony, which the Archbishop of Naples offers concerning the cleric R. And, adding his own prayer to those offered by the advocate for the granting of the dispensation, he makes his request. With all these matters considered, both in fact and in law, it was left to the prudent judgment of the Most Eminent Fathers to decide what response should be given to the Most Reverend Fathers, and how assent should be given to the requests of the Advocate in this case. RESOLUTION. The Sacred Congregation, having considered the matter, on May 29, 1880, decided to respond: - For the sake of clarity, let it be understood that it appears to be the right of a cleric to change his domicile with the intention of being promoted to the sacred orders by the Bishop of the new domicile. II. That a Bishop can promote any foreign cleric to the sacred orders, who, by reason of having acquired a domicile in his diocese, is subject to him. III. For a cleric who leaves his diocese in order to establish a true and real domicile in another, is released from the jurisdiction of the former Bishop, but is subject to the jurisdiction of the Bishop in whose diocese he has chosen to establish his residence. IV. That, according to the Canonists, a son who is not yet emancipated does not fulfill the conditions required by the Constitution *Speculatores* for acquiring a domicile, with respect to sacred ordination, if his father has established his domicile in a foreign diocese, fulfilling those same conditions. V. Furthermore, from the testimony of the Archbishop of Naples, it is clear that the father of the cleric R. has transferred his family and possessions to Naples, but has solemnly declared that he is establishing his permanent residence there, in accordance with the Constitution *Speculatores*.

[*Latin ed. p. 527*]

n n EX 8. DECREE OF THE CONGREGATION FOR RITES, ISSUED BY BISIGNANO. Concerning the Beatification of the Servants of God, Members of the Franciscan Reform, and the Canonization of Professed Members of the Order. Regarding a Doubt Concerning Miracles: "Can the Beatification of the Venerable Servant of God, Saint Francis, proceed safely, even without the approval of the Patriarch of Assisi?" The most faithful son of the Patriarch of Assisi, the Venerable and Humble Francis, a lay member of the Franciscan family of the Reform, diligently followed the footsteps of the Holy Father. For he cultivated humility, which he placed above all else, and he desired poverty, which he demonstrated through the renunciation of himself and the rigorous mortification of his flesh, offering his body as a living sacrifice, holy and pleasing to God. Moreover, although he strove to be more humble in the exercise of his duties in the house of God, the preeminence of his virtues, and the celestial gifts with which he was illuminated, made him renowned for his sanctity. Therefore, his heroic virtues were solemnly proclaimed by the Most Holy Pope Paul VI on the feast of Saint Francis in the year 1780. Furthermore, a supernatural testimony of mira-

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cles, which attested to the Christian perfection and the practice of monastic discipline to which the Venerable Servant of God devoted all his efforts until his death, was added. Two of these miracles, obtained through the intercession of the Venerable Servant of God, after a rigorous discussion, as is customary, by the Congregation of Sacred Rites, were declared by the Most Holy Pope Pius IX in a true Apostolic Decree, issued on the Sunday after Pentecost in the year 1875. Although, from the aforementioned Decrees concerning the virtues and miracles of the Venerable Humilis a Bisiniano, it was already established, a doubt remained to be discussed: whether he could safely be included among the Blessed. Therefore, this matter was presented before the Most Holy Lord, our Pope Leo XIII, in a frequent meeting of the Sacred Rites on the eighth day of March of the current year, and with unanimous agreement, the Most Reverend Cardinals entrusted with the safeguarding of the Sacred Rites, and the Consultors, approved of the doubt. However, the Most Holy Lord deemed it necessary to offer fervent prayers, so that in this important matter, He might obtain greater help from the Father of lights. Finally, to fulfill the vows of the Minorite family, after the Sacred...

[*Latin ed. p. 528*]

828 DECREE from the Sacred Congregation of Rites, held in the Oratory of the Vatican Palace, adjacent to the hall, before the Most Reverend Cardinals, with His Eminence Cardinal Bartolini, Prefect of the Congregation of Sacred Rites, and Anthony Mary Panebianco, Relator of the Cause, as well as Father Lawrence Salvati, Promoter of the Holy Faith, and the undersigned Secretary, it was decreed: "That the process may proceed towards the Beatification of the Venerable Servant of God, Humilis of Bisiniano." And this Decree was ordered to be made public and recorded in the Acts of the Sacred Congregation of Rites, and that Apostolic Letters, in the form of a Brief, should be issued concerning the Beatification to be celebrated in due time, on the sixth day before the Kalends of April, in the year 1881. His Eminence Cardinal Bartolini, Prefect of the Sacred Congregation. Signed, with the seals, Placidus Ralli, Secretary of the Sacred Congregation. DECREE. CEPHALUDEN. Concerning the Confirmation of the Cult rendered to the Servant of God, Gandulphus of Binasco, of the Order of Friars Minor of Saint Francis, who is venerated as a Saint and Blessed, from time immemorial. Whereas, in the Ordinary Session of the Sacred Congregation of Rites, held this day at the Vatican, His Eminence and Most Reverend Cardinal Thomas Maria Martinelli, having presented the aforementioned Cause, proposed the following question: "Whether the sentence pronounced by the Most Reverend Bishop of Cephaluden, concerning the cult rendered to the aforementioned Servant of God from time immemorial, or concerning the exception made from the Decrees of Pope Urban VIII, should be confirmed in this case and for this purpose?" The

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Most Eminent and Most Reverend Fathers, entrusted with the preservation of the sacred rites, having carefully considered all matters, and having heard the opinion, both orally and in writing, of Father Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond: "Affirmatively, that is, the sentence is to be confirmed." On February 12, 1881. These matters, having been faithfully reported to His Holiness, Pope Leo XIII, through the undersigned Secretary, His Holiness approved and confirmed the Decree of the Sacred Congregation on March 10 of the same year. His Eminence Cardinal Bartolini, Prefect of the Sacred Congregation. Signed, with the seals, Placidus Ralli, Secretary of the Sacred Congregation.

[*Latin ed. p. 529*]

529 Letters from His Holiness Pope Leo XIII to Bishop Pineroli; in which he expresses his joy that he adheres to the teachings of the Angelic Doctor, setting aside others.

LEO XIII, Pope. To the Venerable Brother and beloved sons, greetings and the apostolic blessing. We rejoice with you, Venerable Brother and beloved sons, that, as you come together to deliberate on the progress and perfection of your diocese through spiritual retreats and deeper discussions of heavenly matters, and to seek new effectiveness and new strength for your ministry, you clearly see that these things will be all the more accessible to you the more closely you adhere to this Chair of Peter, from whose doctrine and warnings those who deviate are condemned and dispersed.

It is therefore most pleasing to Us that you, in that conflict of opinions which has for a long time divided minds, have decided to reject the views of those who, deceived by the subtlety of intellect and the apparatus of science, stubbornly hold the opinions of certain recent authors and defend their arguments; and that you have resolved to follow rather the doctrine which We have designated as safe and solid, not only because it has been commended by many saints and most learned men, by the Roman Pontiffs and by the very General Councils, but also because experience teaches that the higher disciplines have inclined more and more, and that errors have become wider and more impudent, the further they have been from it.

Indeed, if you follow the Angelic Doctor, you will not only draw the purest essence of knowledge from him, but also such strength and weapons as will make you and the younger clergy most fit to overthrow and destroy the advancing phalanx of errors. We foretell the success of your endeavors; and, as a sign of divine favor and a pledge of Our most sincere benevolence for the gift received, We impart the apostolic blessing to you, Venerable Brother and beloved sons, and to the entire diocese.

Given at Rome, near St. Peter's, on this 15th day of November, in the third year of Our pontificate.

LEO XIII, Pope.

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Acts, Volume XIII, page CLVI, 34.

[*Latin ed. p. 530*]

530 FROM THE CONSISTORY ACTS: Concerning the Consistory held on May 13, 1881. (1) The Most Holy Father this morning proposed the following sees: The CATHEDRAL CHURCH OF OLINDEN is vacant, due to the death of the Most Reverend Vitalis Mariae Gonçalves de Oliveira, the last Bishop, who died outside the Roman curia, with the favor of the Reverend Joseph Pereira da Silva Barros, a priest of the diocese of St. Paul in Brasiliae, presented by the Most Serene Emperor of Brasiliae. He formerly served as Prefect in the diocesan seminary of St. Paul, and most recently as Rector there; for many years he was a parish priest in the city of Taubaté; and he has been appointed as an extraordinary member of the Most Holy Father's inner circle. The CATHEDRAL CHURCH OF GOYANENSIS is still vacant, due to the translation of the Reverend Father Joachim Gonçalves de Azevedo, who has recently passed away, to the Metropolitan See of St. Salvador in Brasiliae, for the Reverend Father Antonius Maria Correa de Sà and Benavides was elected Bishop of Goyanensis on December 18, 1876, to whose see he has not yet taken possession, nor has he received the charge of consecration, but was transferred to the see of Marianna in Brasiliae on June 25 of the following year; with the favor of the Reverend Claudius Joseph Gonçalves Ponce de Leäo, a priest of St. Salvador in Brasiliae. For many years he served as a Catechist in Paris and Fortaleza, and in the seminaries of Fortaleza and Fluminis Ianuarii, and he has resigned from his position as Professor of nearly all disciplines, particularly Canon Law, Moral Theology, and Sacred Scriptures. The EPISCOPAL CHURCH OF SIONNEN, under the Metropolitan of Petrense in the parts of the infidels, is vacant, due to the succession of the Reverend Father Aloysius Martucci to the Cathedral Sees of Penne and Atri, which are united to him; with the favor of the Reverend Francis Ludovicus Fleck, a priest assigned to the diocese of Metz, who was appointed as a Coadjutor. (1) We have given other Episcopal proposals in the preceding fascicle 499.

[*Latin ed. p. 531*]

FROM the Acts of the Council, concerning the future succession of the Most Reverend Father Paul George Mary Dupont des Loges, Bishop of Metz, with the expressed consent of the aforementioned, due to his advancing age. He was transferred to the parish of Saint Martin in the city of Metz, and, among the Canons of that Cathedral, was added to the honors, and was chosen as Secretary of the same Diocese. For the same city and diocese, he was also appointed General Vicar in spiritual matters, and Official, and until now, he has relinquished the archdeaconry of the district of Sarreguemines.

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THE EPISCOPAL CHURCH OF TIPASITAN, under the Archbishop of Caesarea, in parts among the infidels, is vacant, due to the death of the late Reverend Father Aloysius Elloy, the last Bishop of that see to have died outside the Roman Curia; with the favor of the Reverend Father Francis Lichtensteiger, a priest of the archdiocese of Kollotschau: who was also appointed as an Auxiliary to the Most Reverend and Illustrious Lord Louis, with the title of Saint Mary of the Angels, a city of the Holy Roman Empire, to the Cardinal Priest Haynald, Archbishop of Kollotschau and Bacs, for pontifical and other pastoral duties, with his consent and willingness, to be undertaken in the city of Kollotschau, and in that archdiocese. He relinquished his position as a Canon beside the metropolitan church of Kollotschau, and until now, he held the third rank among the Canons, and was appointed as Vicar General and Auditor of causes for that archdiocese.

(STORIALIBUS 531) In parts among the infidels, vacant, due to the translation of the Reverend Father Anthony Mary Grasselli, of the Order of the Friars Minor Conventual of Saint Francis, to the Archiepiscopal Church of Colossae; with the favor of the Reverend Father Severin Morawski, a priest of the archdiocese of Lviv of the Latin Rite, who was also appointed as an Auxiliary to the Most Reverend Father Francis Xavier Wierzchleyski, Archbishop of Lviv, of the Latin Rite, for pontifical and other pastoral duties, with his consent and willingness, to be undertaken in the city of Lviv, and in that archdiocese. He was chosen as a Canon of the Chapter of Lviv of the Latin Rite, successively honored with the dignity of Scholastic, and until now, he has assumed the dignity of Dean, and has been added among the Domestic Prelates of His Holiness.

THE EPISCOPAL CHURCH OF CANO- THE EPISCOPAL CHURCH OF TRAPE- PEN. under the Patriarch of Alexandria, in parts among the infidels, is vacant, due to the translation to the see of Sessa Aurunca of the Reverend Father Charles de Caprio; with the favor of the Reverend Father Innocent Mary Yeregui, a priest of the diocese of Montevideo, who was also appointed as an Auxiliary to the Reverend Father Hyacinth Vera, Bishop of Montevideo, for pontifical and other pastoral duties, with his consent and willingness, to be undertaken in that city and diocese. He has sometimes performed the duties of the Public Orator of Montevideo before the Apostolic See, and has been added among the Urban Antistites of His Holiness.

ZOPOLITAN. under the Archbishop of Lao- THE EPISCOPAL CHURCH OF GRA-

[*Latin ed. p. 532*]

532 FROM THE CONSISTORY ACTS, the See of Caesarea in the territories of the infidels is vacant, due to the death of the Reverend Monsignor Octavian Maria Sabetti of the Congregation of the Most Holy Redeemer, the last Bishop to have died outside the Roman Curia; with the favor of the

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Reverend Father Francis Lönhart, a priest of the Transylvanian diocese. He was also appointed as an Auxiliary to the Reverend Bishop Michael Fogarasy of Transylvania, for pontifical and other pastoral duties, with his consent and willingness, to be performed in that city and diocese. The parish priest of Claudiopolitan, and custodian of the royal archives, a Canon from the side, and until now, the Major Prefect of the Church of Alba, has been added among the Domestic Prelates of HIS HOLINESS.

TIANOPOLITAN CATHEDRAL CHURCH is vacant, due to the translation of the Reverend Father August Antonini Vicentini to the Archiepiscopal See of Aquila, with the favor of the Reverend Casimire Gennari, a priest of the Cassano all'Jonio diocese.

VERSAN CATHEDRAL CHURCH is vacant, due to the voluntary and willing resignation of the Reverend Father Nicholas Pace, which was carried out and accepted by HIS HOLINESS; with the favor of the Reverend Father Eusebius Magner from Monte Santo, of the archdiocese of Firmana, of the Order of the Friars Minor Capuchin of Saint Francis. He had served as Prefect of the College of Foreign Missions of his Order, and as Professor of sacred controversy, and had performed the duties of a general consultant, or provincial, and repeatedly as a general definitor of the same Order, and was chosen as a pro-Synodal examiner for the Senigallia diocese, and was a member of certain academies in Rome, and was numbered among the consultants of the Sacred Congregations of Propaganda Fide, the Index, and the Sacred Rites, and until now, was the Concionator of the Most Holy House of the Supreme Pontiff.

THE EPISCOPAL CHURCH OF TROADEN, under the Archbishop of Cyzicus in the territories of the infidels, is vacant, due to the translation of the Reverend Father Placid Petacci to the Cathedral See of Tiburtina, with the favor of the Reverend Aloysius Maria Pellegrini, a priest of the Hydruntinae Archdiocese. He had sometimes served as a professor of philosophy and sacred theology in the Hydruntino seminary, and is currently a Canon of that Metropolitan Church.

BARENSE, in the province of both the Archpriestly Churches of Alti Muri and Aquae Vivae, of the Nullius diocese, was recently endowed with an Archpriestly and ordinary Prefecture by the Most Holy Pope Pius IX, through Apostolic Letters "Si aliquando" dated the seventeenth of August, 1848, by the Most Holy Lord, our Pope Leo XIII, through divine providence.

THE EPISCOPAL CHURCH OF SERGIOPOLITAN, under the Archbishop of Hierapolis, in the territories of the infidels, is vacant, due to the death of the Reverend Monsignor Adrian.

[*Latin ed. p. 533*]

From the acts of the late Monsignor Languillat, the last Bishop, who died outside the Roman curia; with the favor of the Reverend Father Cai-

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etano Blandini, a priest of the diocese of Calatayeronensis. Having served as Parish Priest in his native town, and having held the office of Secretary for his predecessor, the late Bishop, he was, among the Chaplains of His Holiness, appointed to an honorary position outside the city, and by the Most Holy Lord, Our Pope Leo XIII, by divine providence, he resigned from the ordinary See of s. Luciae de Plano Me'latii, now commonly called s. Luciae del Mela. The Episcopal Church of LETEN, under the Archbishop of Thessalonica, in the parts of the infidels, is vacant due to the translation of the Reverend Father Michaelis Francisci Buttigieg to the See of Gaudisiensem; with the favor of the Reverend Father Tobias Kirby from the diocese of Waterford and Lismore. For many years, he was in Rome at the Irish College, serving as Rector, and until now, he has held the office of Rector; he has also performed the duties of Procurator for the Irish Bishops at the Apostolic See, and has been appointed a Canon of the Collegiate Basilica of s. Marci in the city, and has resigned from his office as Prelate of the Pontifical House of His Holiness. The Metropolitan Episcopal Church of TIOPOLITAN, under the Archbishop of Se- STORIALIBUS leuciense, in the parts of the infidels, is vacant due to the death of the late Bishop Eugenius Stephani Charbonnier, who died outside the Roman curia, with the favor of the Reverend Father Alphonsi Giordano from the diocese of Abellino, a priest of the Congregation of the Most Holy Redeemer. Formerly appointed as Archpriest Vicar for the Patriarchal Church, he has now resigned from his office at the College of s. Reparatae in Theane in the city. The Metropolitan Episcopal Church of CAESA-, under the Archbishop of Philippense, in the parts of the infidels, is vacant due to the translation of the Reverend Father Cutberti Hedley to the united Sees of Neoportensem and Menevensem, with the favor of the Reverend Father Petri Pauli Stumpf, a priest of the diocese of Argentinensis, who was also appointed as a coadjutor with future succession to the Reverend Father Andreae Raess, Bishop of Argentinensis. Having served as a parochial Vicar in s. Laurentium Argentinensis in the city, and then in Rome at the French seminary, serving as Rector and Professor of sacred theology, he has now resigned from his office as Rector of the larger seminary of Argentinensis, as well as from his office as Canon of its Cathedral, and as General Vicar for spiritual matters for that diocese.

[*Latin ed. p. 534*]

534 FROM THE CONSISTORY ACTS, THE FOLLOWING CHURCHES WERE ERECTED: THE ARCHDIOCESE OF AMIDEN, in a mission territory, to the Reverend Father Francisco Norberto Blanchet, a missionary from Oregon. THE ARCHDIOCESE OF EMESÈN, in a mission territory, to the Reverend Father Anacleto Chicaro, from the Order of Saint Felix, appointed Apostolic Visitor of Saint Bartholomew in Insala, and designated Apostolic Vicar of the Latins in Egypt. THE DIOCESE OF

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EUMENIEN, in a mission territory, to the Reverend Father Nicolao Pace, who had resigned from the See of America, and who retains it provisionally. THE DIOCESE OF ANTINOEN, in a mission territory, to the Reverend Father Ignatius Mrak, who is already Bishop of Marianopol and Marquetten. THE DIOCESE OF CYRENEN, in a mission territory, to the Reverend Father Peter Cappellari, who had resigned from the See of Concordien, and who retains it provisionally. THE CATHEDRAL CHURCHES OF NEOPORTEN AND MENEVEN, to the Reverend Father John Cuthbert Hedley, transferred from Caesaropol, in a mission territory. THE CATHEDRAL CHURCH OF NATCHETEN, to the Reverend Father Francisco Ians, as General Vicar of Richmond. THE CATHEDRAL CHURCH OF SAINT ANTHONY, to the Reverend Father Claudio Neraz, who had previously served as administrator in spiritual matters. THE DIOCESE OF LYSTREN, in a mission territory, to the Reverend Father Gonzalvo Canilla, appointed Apostolic Vicar of Giblatarien. THE DIOCESE OF ALBA, in a mission territory, to the Reverend Father Hermanno Koeckemann, appointed as coadjutor with succession to the Reverend Father Aloysius Maigret, Apostolic Vicar of Sanwichen.

[*Latin ed. p. 535*]

535 FROM THE HOLY CONGREGATION FOR THE DISPENSATION OF MARRIAGES, May 28th and December 11th, 1880. In the year 1877, negotiations for marriage began between Theolinda, a woman of 32 years of age, and James, who was 41 years old. However, it happened that the young woman became suspicious of certain habits of James, both when the man visited his home, and when they walked together in the more frequented streets of the city. Such suspicions added anxiety to the woman's mind, but these were calmed by the ministrations of the confessor; therefore, she did not cease to manifest signs of affection, even through loving letters, to her betrothed. After the marriage was finally celebrated on January 23rd, 1878, the newlyweds immediately went to Florence, where they stayed for three days and nights, sleeping in the same bed, but the marriage was not consummated due to the woman's reluctance. Soon after returning to their homeland, they remained in the same house for about a month; but in the same room and on the same bed, the woman remained only for one night, under the condition that the door of the room would be unlocked, and that someone would remain awake in an adjacent room. Furthermore, the woman added this agreement: that the man would make no attempt to consummate the marriage, from which she utterly abhorred, even because of James's character. SUMMARY OF THE FACTS. Therefore, after a month of living together, since James had not been able to persuade his wife, and after also employing the efforts of his brother, a religious man, and after Theolinda had refused to go to her husband's paternal home, James left

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the hospitality of his wife's home. He spoke with her only once afterward.

[*Latin ed. p. 536*]

536. She confesses to being married, and again invites him, but without success, to fulfill the duties of marriage and to live together as husband and wife. Hence, in June of 1878, Theodolinda presented a petition to the Most Holy Fathers, requesting a dispensation from the marriage, which had been consummated but not fully realized.

DEFENSE OF THE WOMAN. The defender of the woman affirms, with abundant and most evident proof, that the union of bodies did not occur; these proofs are: the sworn testimony of the spouses, validated by their religion and faith, the common opinion that prevailed in all matters, and the testimony of the confessor. Then, he briefly outlines the judgments of three midwives and two physicians, all of whom, without exception, testified that the woman's virginity was manifestly preserved; thus, the highest degree of evidence is reached.

Regarding the other condition for the dispensation, namely the causes, he states that they must be discussed more fully, because those causes are then considered legitimate and should be given precedence, especially when they concern the safety of souls and the removal of scandal. (Cosci de sep. tor. lib. S cap. 2 num. 99, Fagnan. in cap. Quia circa 6 num. 7 de consang¿ et affin. Animarum vero discrimen ex invincibili mulieris aversione, ex perpetua resistentia ad praestandum uxoris officium, ex gravioribus malis quae expectanda sunt, contendit.

Concerning aversion, he recounts the woman's words, in which she stated that she was struck with horror towards the man, and that she felt such horror that she would rather die than celebrate the marriage. He demonstrates that there is no reason to doubt the truthfulness of this protestation, for the most pious woman deserves full faith, and her confessor, who attended the marriage, and who left nothing undone to ensure that it would not fail to be consummated, has not been tainted by any invincible aversion, but has, on the contrary, explicitly admitted and confirmed it.

Furthermore, he states that the aversion of the soul is of the greatest importance in granting a dispensation, according to Clericat. de sacr. matrim, dec. 15 n. 45, De Luca de matrim, disc. 3 num. 8, Lancettot. in voto penes Ursayam to. 3 par. 2 disc. 21 annot. 62, Corrad. in praxi disp. lib. 8 cap. 7 n. 33.

[*Latin ed. p. 537*]

"Nor must that most serious danger be overlooked," the defender adds, "which arises when one of the spouses consistently refuses to fulfill the duties of marriage and promises to continue to do so, while the other is subjected to repeated acts of adultery. For, as taught by Ursaya in the *Dis-

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putationes Ecclesiasticæ*, tome 2, part 2, discourse 21, number 95, there is a danger of prolonged fornication. The woman, however, vehemently rejected and always resisted the unwanted union, as testified by the husband himself, who left nothing untried to induce her to consent; but in vain, as the actress's mother and other witnesses testified. Indeed, the confessor refused to hear her in the sacrament of penance as long as she did not change her mind. He does not find it surprising that the girl showed such resistance. For nothing is more necessary in the union of bodies than a certain consent of the mind; and terror and repugnance extinguish any spark of nature. Furthermore, the actress stated that she was deeply disturbed when, during the very act of the first union, she perceived signs of insanity in her spouse. Therefore, he asserts that, in the case of granting a dispensation, the consent of the other spouse is not required by law; because it is not fitting that one of the spouses should be vexed by the will of the other, and that the spiritual well-being of one should be sacrificed to the malice of the other, as Sánchez teaches in *De Matrimonio*, book 2, chapter 15, number 7. "In order for the Pope to grant a dispensation in a valid marriage," it is not necessary for there to be mutual consent of the spouses, but "if there is a just cause, the Pope can grant a dispensation, even against the will of one of them," and this is confirmed by Barbosa, title *Codex Solutio Matrimonii*, part 2, rubric number 103, Clérical in *Erothemata Ecclesiastica*, chapter 143, number 14, Corradus in *Praxi Dispensat*, book 8, chapter 5, number 13, Guttier in *De Matrimonio*, chapter 53, number 3, and Perez, *De Matrimonio*, chapter 20, section 7, number 8. He states that a particular cause exists in the present judgment, namely, the danger of dementia and the insane fear that afflicted the wife. For there are many things in this man that can be said to be very serious, and they indicate a lack of sound mind. All of this is proven by the testimonies of numerous witnesses, and the witnesses themselves, induced by the man, not only did not contradict it, but openly admitted it. However, even more serious matters arise, which indicate that the man's mind is infirm."

[*Latin ed. p. 538*]

538. Marriages [are proven] to be valid, and the custom of the entire life [demonstrates] in no way that it is secure. Therefore, rightly and justly, a woman may doubt the sanity of her husband, who suffers from grave and persistent hallucinations; these are so close to madness that they demonstrate a derangement of the mind. Hence, the most serious arguments for hallucinations are deduced from the entire bearing of the body and the foolish actions in which the man excels, as Zacharias, *Quaestiones medico-legales*, book 2, title 1, question 3, number 3, states. It cannot be objected that many men conduct themselves prudently and in many affairs, behaving like sane men. For this is common to all those whom the moderns call "madmen," because they do some things in a most

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foolish manner, while others they accomplish prudently, as Zacharias, *Quaestiones medico-legales*, book 2, title 1, question 3, number 20, teaches. "They sometimes do everything not only with prudence," but also with foresight, "yet it is manifest that they are openly insane in certain particulars," and this is confirmed by Girolamo in his work *Sulla pazzia* (On Madness), psychological and pathological studies, volume 4, pages 380 and 409. Therefore, when considering the cause for a dispensation, the defender argues that it is sufficient for one spouse to fear the madness of the other, and that this opinion is firmly implanted in the mind of that spouse, so that an intolerable cohabitation appears, and so that conjugal affection is continually removed. This opinion is demonstrated in the woman, first from her own testimony, and then from the testimonies of witnesses, and especially from the depositions of the confessor, and it has grown so much that she has wept and trembled, and even wished to abandon the house itself. Finally, the husband objects, producing the woman's letters to prove that she knew of his infirmity from the beginning, and concludes that the cause for a dispensation cannot be alleged by a spouse who knew of it before the marriage. The woman truly confesses that she knew certain things about herself before the marriage, but she considered them of little importance; after the marriage, she concealed the appearance of a disordered mind. The variety of opinions on this matter was also addressed by the confessor, as is evident from his testimony. For he who initially considered the man's hallucinations to be minor, upon seeing the new circumstances...

[*Latin ed. p. 539*]

MATRIMONII 539, having considered the matter, changed his opinion and acknowledged the necessity of requesting a dispensation. OBSERVATIONS OF THE DEFENDER, OR COUNSEL FOR THE PARTY SEEKING THE ANNULMENT. The defender opposed Theodolinda's petition for the annulment of the marriage, not only based on the external procedural aspects, but also internally, because the foundation for granting a dispensation is lacking, which consists in the proof of the lack of consummation of the marriage, and the existence of legitimate causes. Regarding the external aspects, he stated that the process was flawed in substantial forms, contrary to the instructions of the Sacred Congregation, and he doubted whether that process could be rectified. Granted, although not conceded, that the aforementioned defects might be considered remediable, nevertheless, addressing the internal question, he recalled that from the petition submitted by Theodolinda herself, it was discovered that she had spent four entire nights with her husband, in the same bed, and indeed, as the documents indicate, amidst reciprocal embraces and kisses. Given these facts, a spontaneous and legally valid presumption arises that the marriage was consummated. Indeed, it is well established in law that cohabitation

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and sleeping together of spouses creates a presumption of law that the marriage was consummated (Gloss, in cap. 4 Si quis accepit caus.; De Iustis De dispens. matr., lib. 2, cap. 10, n. 21; Pignatell., consult., 149, n. 1; S. C. in Comen. Matrim., 17 December 1768). Moreover, this presumption of consummation arises even from the mere delay of the spouses in a secret and secluded place, for a period of time sufficient to allow for intercourse, as the canonists, and especially the author from Panormitanus in cap. Litteris de praesumpt., n. 4, Menoch., De praesumpt., lib. 6, q. 89, and Abbas in cap. B, state. However, this presumption is not to be overturned, unless conclusive proofs are presented (Pignatell., consult., 149, n. 1; Rota decis., 54, n. 8, recent, and DD. communiter), which are entirely lacking in the present controversy; in which case, the facts are so extensive that the presumption itself cannot be destroyed, either through the oath of the spouses or of third parties, or through the very experiment of virginity. Regarding the first point, he stated that, in law, it is easily presumed that spouses...

[*Latin ed. p. 540*]

540. To feign a marriage, to present an impediment in confession, and thus to seek help from a third party; this practice is not to be employed, unless it is certain that they have never lived together as husband and wife: *Come*. De Separ., torn. 1, cap. 1, no. 17; Hostiensis in *Summa*, title *de Conv. Coniug.*, no. 9. The contrary is demonstrated in the case where the reason for the impediment is adduced as the woman's repugnance, established in her advanced youth; she declared that she did not wish to remain unmarried, that she desired marriage with James, and that she was happy that the days chosen for the marriage were those on which she was free from menstruation. Knowing all of this perfectly well, she seeks a new pretext in the qualities of the bridegroom. With a lost, but true, intention, it is evident from the documents that the bridegroom's character was made known to her, and that she, alone with him in Florence, did not fear his character. Furthermore, the supposed proof of virginity, which is presented as a second argument, is less convincing. For it is not unknown that this argument is considered deceptive, and that it often deceives midwives and other experts, as the sacred canons openly state, and as is widely read in the collection of resolutions, especially in Corduba. *Dispensationes Matr.*, 20 September 1760; *Dispensationes Matr.*, Naples, 15 September 1827. Upon closer examination, the entire argument rests on the presence of the hymen, about which the midwives speak, without mentioning whether it is softer or harder in Theodolinda; for in the first case, the union could easily have taken place without breaking it, as Albini states in *Acad. Annot.*, book 4, chapter 10, page 52. Indeed, to determine virginity solely from the presence of the hymen is to err, according to those skilled in the art, as Barzellotti states in *med. leg.*, chapter 1, § 82; and Puccinotti in *lezione di Medicina legale*, book 2, § 9. Metaxà, in his published work of 1824, and Scipione,

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in his legal opinion, apud Advocatum Ala, in the work entitled *Ala foro criminale*, volume 7, page 203. However, upon examining the midwives' reports, there is no mention of the hardness or softness of the hymen, nor any description of the parts that would necessarily be required to form a judgment, with all the signs concurring, about the integrity of the hymen; but only that it was found to be present.

[*Latin ed. p. 541*]

In *Matrimonii* 541, it is asserted that the hymen is intact. It is not followed by the statement that this defect has been remedied, either through answers given to questions by physicians, since it is not established that the midwives were questioned about each individual matter; or because they judged Theodolinda's virginity solely on the basis of hearsay. Nor are there any interrogatories conducted by a diligent defender, which are entirely lacking in the records. Thus, with the foundation of consummation refuted, it would be superfluous to dwell on the reasons for a dispensation. For, as long as the possibility of consummation remains, the dispensation is denied: so declares the Sacred Congregation in *Chien. Matr.*, December 16, 1791, § 6, and the Council of Spoleto, December 20, 1878, § Hoc. But even if we assume the hypothesis of non-consummation, Theodolinda's condition does not improve; for just and reasonable causes are always lacking to obtain a dispensation, without which the Supreme Pontiff cannot grant a dispensation. This deficiency in the matter is evident. For there are no quarrels or discord between the parties, no scandals or animosities, no danger of incontinence. Both are outstanding in religion and virtue; after the separation, they have lived together peacefully and amicably; and even during the heated proceedings, the husband has not uttered a single offensive or angry word against his bride, but has patiently endured the interrogatories, bearing all with Christian patience. Therefore, there is not even a trace to be found of discord or quarrels. The danger of incontinence is entirely absent, both on the part of the woman, who has vowed to abhor the consummation of marriage and to live with her husband as a brother and sister, and on the part of the husband, who is so chaste that he was able to declare himself a virgin before his bride in the first marital embrace. Opposing the argument that a cause has been brought forth from aversion or the danger of aversion, the defender of the sacrament maintains that it was rather presented to enhance the beauty of the case, since the judgment of aversion or the danger thereof should be left to expert physicians, of which there is neither word nor mention. On the contrary, the records show that, although James was troubled by certain scruples that were known before the marriage, nothing else is found in his conduct.

[*Latin ed. p. 542*]

542. Concerning marriages, it is discovered. And he argues that, because

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of the aforementioned scruples, one might be in danger of falling into the vice of aversion. Finally, the wife, who is indeed afraid of her husband, and who, therefore, is brought forward to obtain a dispensation, declares that this fear is without cause and arises solely from imagination, and that it will not last, so that he himself may be able to adduce a grave reason for granting the dispensation. Indeed, he says that such fear ought to be despised, because he himself was led to it by adornment. It is known from the records that Theodelinda proposed to her husband that they live together, as brother and sister. But it is clear to no one that one ought to fear a spouse, or one who is in danger of aversion, not only the wife, but also a friend, a sister, and a servant; while Theodelinda, as a wife, fears, but does not fear as a sister. Therefore, having explained these things, it was deemed wise for the E.E. PP. to resolve the matter concerning whether or not one should consult with the Most Holy [Pope] regarding a dispensation concerning a marriage that is valid but not consummated.

RESOLUTION. After carefully considering the matter, the Sacred Congregation responded on May 29, 1880: Affirmative. After a new hearing, granted at the request of the Defender of the Marriage, the question was again debated under the formula of doubt: Whether one should adhere to or depart from the decisions in this case. But on December 11, 1880, the response was given: Adhere to the decisions.

FROM WHICH ONE MAY GATHER:

I. That, if the integrity of the woman is proven, the Apostolic See does not usually deny a dispensation concerning a marriage that is valid but not consummated, whenever legitimate reasons are present for the requested dispensation.

II. That, however, nothing is definitively established in law regarding the legitimacy of the reasons, but that the Doctors have taught: that, whenever the health, or harmony, or salvation of the soul may be feared, one should provide for it through a dispensation.

[*Latin ed. p. 543*]

MATRIMONII 543 I III. Therefore, the entire question rests with the judge, whenever he doubts whether the legitimate causes for dispensation are present, or whether those presented as such are indeed valid. IV. This, however, must be understood in such a way that it is not permissible to undermine a valid marriage without a probable cause, to be assessed by the judge according to prudence, honesty, and equity; but likewise, dispensation must not be denied without causing a detriment to the head [of the Church] or to eternal salvation. V. Therefore, the magnitude of the causes must not be so exaggerated that every dispensation in a valid marriage becomes practically impossible; otherwise, the Supreme Pontiff

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would be improperly exercising his authority to grant dispensations over valid marriages. VI. Such marriages do not possess absolute indissolubility; for they lack the full significance of the union of Christ with the Church, which is perfected by carnal conjunction, when indeed, "two become one flesh." VII. When a just cause for dispensation exists, the mutual consent of the spouses is not required; but the Supreme Pontiff is able to grant dispensation, even against the will of one of them. VIII. In the matter of a woman's proven integrity, grave causes for dispensation appeared to be present; such as the woman's aversion to her husband, which grows daily without hope of future reconciliation; the woman's great fear due to the danger of dementia; and also a serious fear of future scandal, which must be prevented by dispensation.

ACCOUNTING AND SERVICE TO THE CHOIR. On May 29, 1880, after completing his pastoral visitation, the Bishop W. discovered in his Cathedral Church certain things that had long existed, which appeared to be less in conformity with ecclesiastical regulations. Moved by this, he prepared the following:

COMPENDIUM OF FACTS.

[*Latin ed. p. 544*]

544 It seemed opportune to him, considering his pastoral concern, to introduce certain reforms. Therefore, through a special decree, he reformed some matters which he deemed should be subject to his episcopal jurisdiction, while leaving others untouched, fearing lest he might thrust his sickle into another's field, or that something worse might result from the reforms. However, so that these matters would not remain unresolved for long, he presented them to the Sacred Congregation: the administration of the goods of the Cathedral Chapter, of the Fabric, and of pious foundations, and the obligation to render an account of the administration annually to the Ordinary, according to the decree of the Council of Trent (Tridentina), Session 22, chapter 9, concerning reforms. He also added that, according to an ancient custom, the Divine Office should be recited in the Cathedral Church by lay singers; and he gives a lengthy explanation regarding the hours during which the canons are present, during which they are absent, and regarding all distributions made. Furthermore, he states that the canons should be present during the hours designated for prayer, even when celebrating private Mass. He also mentions a custom whereby the Cathedral Chapter of W. annually reviews the accounts through its appointed representatives and grants dispensations, and that this practice cannot be maintained, as the Ordinary cannot, under any circumstances, dispense with the obligation to render accounts, except during a visitation. Such a custom, indeed, contradicts both ancient and modern law; and it

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also seems to contradict the most steadfast practice of the Sacred Congregation. Indeed, Pope Clement V, in Chapter 2 of Book 3, Title H, concerning religious houses, when discussing the administration of pious places, decreed as follows: "Those to whom the governance or administration of said places is entrusted shall take the oath of guardians and curators, and shall make inventories of the goods of said places, and shall render an account of their administration annually to the Ordinaries or to others to whom such places belong, or to those appointed by them." Ancient law agrees with modern law. Indeed, the Sacred Council of Trent, in Session 22, Chapter 9, concerning reforms, decreed as follows: "Ecclesiastical and lay administrators of any church fabric, even a cathedral, hospital, or..."

[*Latin ed. p. 545*]

RENDITION 545 » » » » » » » » of fraternities, alms houses, and other pious institutions, must each year render an account of their administration to the Ordinary. If, however, by custom or privilege, or by some local constitution, others are deemed to be subject to this obligation, then the Ordinary must also be included, and otherwise, such dispensations will not be of any benefit to the aforementioned administrators. These common laws are in agreement with the pronouncements of learned Doctors, among whom Pignatelli, in Volume 9, Consultation 153, number 30, has the following relevant statement: "Administrators, whether ecclesiastical or lay, of any church, even a cathedral church, and of all pious institutions, must each year render an account of their administration to the Ordinary." Fagnanus, in the second part of the third book of decrees, chapter "Concerning Religious Houses," number 31, states: "So that not only may the Bishop visit hospitals and similar places, but also may each year demand accounts of their administration from their administrators," as is stated by Cardinal in diem, 1, number 14, concerning testaments; Mola in "Clem.," number 7, concerning religious houses, and this is expressly stated in the decree of the Council of Trent, chapter 9, session 22. But the custom prevailing in the cathedral of W. contradicts all of these; therefore, it must be abolished, says the Bishop. Neither the force nor the efficacy of custom is helpful; because this custom falls under the censure of the law, since it is disapproved of by the Council of Trent. For the Council of Trent, after having decreed in the aforementioned chapter that the administrators of all pious institutions must each year render an account of their administration to the Ordinary, immediately adds that all customs and privileges to the contrary are to be set aside. Furthermore, it is not unknown that a decree that annuls [something] not only annuls every act contrary to the decree, which preceded it, but also has such force and efficacy that it does not allow, at any time, the beginning of a custom or prescription, as commonly state Cardinal De Luca, on jurisdiction, discussion 95, number 7 and 8; Pignatelli, consultation 134, number 16, volume 1; Garz, on parochial benefices, 5, chapter 4, number

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179 and following; and the decisions of the Rota, Acts, Volume XIII, phase CIVI, 35.

[*Latin ed. p. 546*]

o46 ON SUBMISSION 317 no. 12 et seq. part 16, decree 22 no. 18, and decree 192 part. 18 Recent. Indeed, it would not be advantageous to assert that this was the intention of the Fathers, so that any contrary custom, except for the unforgettable one, would be abolished in the future. To this offense, Fagnan responds in the aforementioned chapter, no. 32 on Religious Houses: "so that" the Bishop may demand accounts of administration, "notwithstanding" any contrary custom, even an unforgettable one; for although the Council of Trent in chapter 9 of Session 22 simply abolishes "the custom," that decree also demonstrates, for the best reasons, that the unforgettable custom remains in force, as the Congregation has shown in the case of Cremona... Therefore, this custom cannot in any way be maintained, even if it actually exists; which is precisely what is denied by the Bishop. For Bishop W. in the year 1574, under the threat of censures, ordered the Chapter to render an account to the Ordinary; which was done, although some canon of the Chapter refused. Therefore, since the Chapter formally acknowledged this year its obligation to render an account to the Bishop, it must be held that the Chapter remained aware of its obligation, since no reason is alleged from which it could be inferred that the Bishop had relinquished his right. Furthermore, the Bishop has added that the circumstances that made the rendering of accounts before the Bishop difficult have now been completely changed. Moreover, a sufficiently thorough inspection by the Bishop cannot be carried out if accounts are presented to him when he conducts a canonical visitation. For, rarely does a visitation occur, nor is it easily possible, that so many and such accounts of the Fabric of the Cathedral and the foundations, which the Chapter administers, are exactly reviewed on the occasion of the canonical visitation. Regarding the second point raised, it is not open to doubt that the custom prevailing among the canons of W., by virtue of which the canons perform their divine office through lay singers, while themselves attending the choir but not singing, cannot be tolerated. This, indeed, contradicts the decree of the Council of Trent, in which it is stated concerning the canons in Session 24, chapter 12 on Reform: "All, however, through themselves and..."

[*Latin ed. p. 547*]

REDDITIONIS 547: «Nisi per substitutos, sunt obnoxii ad implenda officia, et ad assistendum et ministrandum Episcopo celebranti aut aliud officium pontificalem exercienti, et in choro ad psallendum institutos, hymnis et canticis nomen Dei reverenter, distincte et devote laudare.» Sanctus Pius V vero, huiusmodi silentium vehementer improbat in Constitutione sua, tomus 2, bulla Romana, ubi Concilium Lateranense,

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declarans ubi fructus Beneficii restituendi decernuntur ab iis qui divinum officium omittunt, eamdem poenam incurri edicit: «Tametsi aliquis choro addictus non recitans, omnibus horis canonicis cum aliis praesens adsit, et fructus et distributiones forte aliter assignatas sola praesentia, iuxta statuta fundationis, vel alias sibi lucrifecisse praetendat.» Hisce patulis iuris principiis semper plausit Sacra Congregatio, quae, testante Benedicto XIV in opere suo *Institutio Ecclesiae*, Institutio CVII, pars III, numerus XVI, saepius decrevit: «Nullius ponderis habendam esse contrariam consuetudinem, neque fungi munere suo Canonicos, qui taceant in choro; neque distributionum fieri participes.» Sacra Congregatio saepius respondit: «Canonicos in choro teneri omnino psallere, alioquin obligationi suae non satisfacere» (die 16 Ianuarii anno 1619, *liber* 12, *Decretum*, pagina 1). Item alio loco: Sacra Congregatio respondit: «Canonicos in choro alta voce non psallentes, distributiones quotidianas non lucrari, quavis consuetudine non obstante.» In causa Vicentina, die 7 Iunii anno 1626, *liber* 15, *Decretum*, pagina 565, a tergum. Fortius autem in proposito huiusmodi consuetudo improbanda esse videtur; quandoquidem ius est, Canonicos muneri suo satisfacere teneri per seipsos et non per substitutos, ut traditum est a Sacra Congregazione Rituum in Egyptien, die 23 Novembris 1602. Et si aliquando permittitur ut Canonici munus suum per substitutos obire queant, id tunc tantum indulgetur, quando legitimo impedimento detenti, illud per seipsos adimplere non valent, ut tradit Sacra Congregatio in Neritonen, 15 Aprilis 1606. Sed tali casu, Canonici impedimento detenti, alios eiusdem ordinis et gradus, non autem inferioris, deputare tenentur, ut docet Sacra Congregatio Rituum in Abulen, 18 Martii 1602, quam refert et authenticam vidisse testatur Nicolaus Garcia de Beneficiis, pagina 2.

[*Latin ed. p. 548*]

548 REDDITIONIS n. 46. It is indeed so far removed from the truth that Canons can fulfill their office through lay substitutes, that it is forbidden for them to allow laymen to stand or sit in the choir during the celebration of the Divine Office. See *Congr. Rit.* in Compostellana, February 4, 1600. Therefore, having considered all these matters, it seems safe to conclude that the custom by which Canons of W. participate in the Divine Office, either by their own voice or through lay substitutes performing the hours of that Divine Office, cannot be maintained. Regarding the unusual custom of having Canons present in the choir who are celebrating a private Mass during the time of the Divine Office, it seems superfluous to discuss this, since it is also contrary to the disposition of Trent in Session 24, chapter 12, concerning Reform. It should be noted that it is the custom of the Most Holy Order to have Canons present in the choir who are celebrating a private Mass during the time of the Divine Office, but only with the permission of the Master of the Choir and for the benefit of the people, as can be

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seen, among others, in the documents of February 8, 1817, and Anagnina, November 20, 1819.

WHAT FAVORS THIS CUSTOM. On the other hand, the Canons maintain that the custom regarding the rendering of accounts to the Chapter has been in force for centuries, and that it should be maintained. For since the time of the Council of Trent, the Bishops of scopi W. have never demanded accounts from the Chapter, judging that no harm could arise from this to the goods and foundations existing under the care and patronage of the Chapter. Furthermore, with regard to pious foundations, not only several Chapters, but also some Bishops, after Trent, have left substantial and profitable assets in the hands of the Chapter. But in doing so, they did not wish to impose a new or unusual burden on the Canons. Since, contrary to common law, and without exception of the law of Trent, a prescription can be valid, this custom, not having been used among us for three hundred years or more, seems to have caused the Chapter to be subject to such an obligation. Having considered these matters of fact and law regarding the value and efficacy of this venerable custom, the Canons conclude that...

[*Latin ed. p. 549*]

Regarding the manner in which accounts can be altered concerning the fabric of the Cathedral Church and other pious places, which accounts have, for three centuries, belonged solely to the Chapter, it is only by the authority of the Bishop, in the act of visitation, that these can be examined and amended. Indeed, the force of a custom, whether centennial or, even more so, immemorial, is so great that, whether it is alleged presumptively or prescriptively, it either improves the title or makes it better, as taught by Cardinal De Luca, *Disputationes*, 32, numbers 2 and 4, to which the Holy Rota concurs in its decisions 514, number 11, part 19, recent, and in decision 493, number 3, part 19, volume 3, recent; or it can invalidate any law capable of being affected by prescription: Piringh, *Ius Canon*, title on prescription, numbers 28 and 30; Cardinal Petra, *Commentaria* on the Constitution of Callistus III, section 2, number 22. However, the cited words of the Council of Trent, Session 13, chapter 9, on Reform, must be considered – there, customs and privileges are mentioned that are contrary to it. For it is clear to no one that, although these words can destroy and overturn a prior custom, they do not seem to be of such a nature as to prevent a new custom from being established. Thus, Piringh, in *Ius Canon*, book 1, title on custom, number 65; Pfeiffenstuel, *Decretum*, book 1, title 4, number 55. Given these circumstances, it seems that, although a custom introduced before the Council of Trent could have been destroyed by a decree of Trent, nevertheless, a new custom introduced after the Council remains valid, and, being reasonable and legitimately prescribed, it overrides the law of the Councils. And this is justly so, for the decrees of the Council of Trent do not possess such force that the Pope cannot derogate from them. Therefore,

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if anyone should find that, by an apostolic privilege, they enjoy a right contrary to the decrees of the Council of Trent, they should not be disturbed in their possession, and it also seems that the Canons of W. should not be disturbed in the exercise of their rights. To overturn such an immemorial custom, nothing is effective, as the Bishop reports, that the Chapter, in the year 1574, did.

[*Latin ed. p. 550*]

550. Having rendered an account of the matter, it must be rendered to the Bishop, because it is a special matter. Hence, even though the custom was once interrupted, yet the favor of the Chapters, which has lasted for more than a hundred years, was never interrupted. After these things, the Canons, proceeding to the second question, concerning the substitution of lay singers in performing the divine offices, observed the following. "The laity, in the question posed to us, are already known to us under the name of 'choristers' from many centuries ago. This institution is indeed the most ancient among us. Our Chapters, from the year 1260 onwards, although their original statutes have passed away, in the statutes promulgated in the year 1384, these choristers are already mentioned as if from ancient times, and there, § 39, it is cautioned that this institution should not be overturned, and that the sons should not be alienated from it, so that these choristers should continuously attend all the divine hours, both day and night. These same choristers are also mentioned in the statutes of the Chapter of the year 1532, § 4, and were well known to the Most Eminent two Cardinals of the Holy Roman Church, namely, our Bishop, Stanislaus Hosius, who himself presided over the Council of Trent with Apostolic authority, and was the most ardent supporter and most pious executor of the Tridentine reform, who, concerning our choristers, did not seek any remedy for the reform, but considered them unnecessary; and John Francis Commendone, Apostolic Legate to the King of Poland, who, as a special Apostolic Commissary in the year 1572, corrected some chapters of our statutes, but left our choristers untouched. And after that, the Most Blessed Joseph Ambrosius, as Apostolic executor of the decrees of the Holy Congregation Consistorial of August 9, 1855, from thalers 1850 and grossi 20, in the same article 1, No. 12, for the salary of the ministers of the Church, assigned 720 thalers to these same choristers, and these same choristers, by Apostolic authority, are to be considered and counted among the ministers of the Church. Furthermore, the Chapters continue, and even now there exist reasons for which the Canons were not formerly obliged to recite daily in..."

[*Latin ed. p. 551*]

The entire office is sung by the choir; indeed, some parts have been increased. For the temperature of the air has changed, and where there were formerly sixteen canons, there are now only ten, mostly advanced in age,

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and more suited to old age than to youth. To all that has been explained thus far concerning the canons, for the maintenance of their special custom, it will not be irrelevant to add what the Bishop states in his responsive letter to the Sacred Congregation of Rites: "It is clear that both the canons and the vicars recite only a small part of the office, while the chanting is performed by lay choir members. Since this practice is based on an immemorial custom, and many of my predecessors have tacitly approved it, or at least tolerated it, I have considered it better to remain faithful to this custom and to await reverently the instructions of this Sacred Congregation."

Furthermore, it can scarcely be demanded that the canons and vicars recite the entire office themselves. The age of the canons is an obstacle, as are other duties, especially the assistance they provide to the Bishop in the administration of the diocese, and the rigor of the winter weather and cold, which sometimes increases. Another obstacle is the multitude of foundations that must be paid. Indeed, at least two Masses are celebrated daily for the Blessed Virgin and the Conventual Mass, often three, and on certain days, when the rubrics prescribe it, four are sung. During the time of the Council of Vatican, on some days, five Masses had to be sung. In addition, the canons and vicars, since that unfortunate notification to this Sacred Congregation in the year 1875, have been deprived of their revenues, which they previously received from the government treasury, and now derive their income only from the foundations that are administered in the Cathedral Church and from certain estates. Therefore, a reduction in the recitation of the office seems necessary to me, which has also been granted to other German chapters by Apostolic authority.

But even the Council of Trent, the canons say, provides assistance to the canons (Session 24 de Ref., cap. 12) by assigning distributions not to all, but to those who are present at the stated hours; and since these distributions must be made according to the reasonable order of any church (cap. un. de clericis non residentibus in 6), only two hours are considered.

[*Latin ed. p. 552*]

552 CONCERNING the sentiment of devotion, reasonably practiced through the use of centuries, the Canons of W. may, even in the future, suffice. After the enumeration of the offices is completed, the Canons continue their prayer in this manner: "While the Canons and Vicars are present, either singing in the choir or reciting [the texts], they themselves sing or recite the same texts together, or they read them aloud with a more subdued voice, or finally, in the meantime, they engage in other exercises of piety and devotion. For it does not seem fitting for men, weakened by old age, or afflicted by hoarseness or other bodily infirmities, to sing loudly or recite in the choir. Certainly, neither the Council of Trent (Session 24, on Reform, Chapter 12), nor Pope Benedict XIV in the Constitution *Cum semper*, § 27, have stated that anyone can be obligated to do what is

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impossible (Reg. iur. 6, § 6). But if any Canons appear to neglect the texts sung or recited publicly in the choir, it is manifest that they are compelled by necessity to do so. Namely, those to whom a greater abundance of duties and burdens have been imposed by the Chapter and by the Bishop, even though given time in the choir, either use that time to perform some part of the divine office, or even dedicate themselves to exercises of private devotion. Even these do not omit, when instituted by hymns and chants, to praise and glorify God reverently, distinctly, and devotedly in the choir, and they fulfill the requirement established by the Council of Trent, although in a different manner, when necessity demands it.

Having considered these matters both in practice and in law, the following points were clarified by the Most Holy Fathers:

I. Whether the Chapter of the Cathedral Church of W. is obligated to render an account annually to the Bishop concerning the goods of the fabric and of the pious foundations, or rather, only on the occasion of the Visitation.

II. Whether the Canons of W. are able to fulfill the divine office through lay singers in the case of necessity. And the answer is affirmative.

[*Latin ed. p. 553*]

RENDITION 553 I, III. Whether those Canons, while celebrating a private Mass during the time of divine office, are obligated to remain present in the choir, as if they were present there. RESOLUTION. After deliberation by the Sacred Congregation, on May 29, 1880, it was decided to respond as follows: To I. Negatively to the first part, affirmatively to the second. To II and III. It is to be tolerated, considering the circumstances. FROM WHICH YOU MAY GATHER: I. By common law and by the laws of Trent, all administrators of any church, even a cathedral, and of all pious places, are obligated each year to render an account of their administration to the Bishop. II. Therefore, from the opinion of the Canons and from the jurisprudence of the Holy Congregations, Bishops can demand such an accounting each year, regardless of any contrary custom, even if it is ancient. III. Canons assigned to chant in the choir are entirely obligated to chant themselves, and not through substitutes; thus, unless they chant aloud, they do not fulfill their obligation, nor can they receive the daily distributions, regardless of any contrary custom. IV. Likewise, the custom by which Canons are considered present when they celebrate a private Mass during the time of divine office should not be observed, unless this is done for the benefit of the people, and with the permission of the Master of the choir. V. The more common opinion is that no custom is permitted that is contrary to the laws of Trent, especially concerning its decrees. VI. However, in certain cases, the Sacred Congregation has tolerated the observance of unusual customs contrary to common law and the laws of Trent, for the sake of those who are associated with them (1). (1) It is certainly the more common

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opinion that no customs contrary to Trent are to be considered valid, at least with regard to its decrees, if these customs are observed with the consent of...

[*Latin ed. p. 554*]

554. The surrender [of rights] of the Pontiff, whether tacit or explicit, to a reason, constantly given, seems to be, when the opportunity arises, something that should not be repeated, as the Supreme Pontiff himself warns by a decree that nullifies any previous action, upon which all the heads of the Council of Trent rely; for this is decreed, and the sanctions of others, even if endowed with contrary customs, do not consent to this. And therefore, whenever a Council is convened, and yet, contrary to these [laws], a contrary custom is introduced, it must be determined whether the contrary custom is prescribed against the custom. Whatever is written contrary to the Council of Trent, or that seeks to revive the sanctions of the Council of Trent contrary to a custom, while being addressed to the Holy See, cannot be considered as prescribed by custom, unless it is done with the intention of the Holy Father. And this seems to have been done commendably, according to the practice of the Holy Congregations, which, acting in the name of the Holy Father, constantly hold in contempt, in the aforementioned question, the customs introduced by the canons. These customs, contrary to the Council of Trent, now injure the Council of Trent, but, with the consent of the Holy Father, who responded through the Holy Congregation, they seem to be tolerated under certain circumstances.

FROM THE HOLY CONGREGATION FOR BISHOPS AND REGULAR CANONS.

SUMMARY OF FACTS.

To John Baptist, parish priest of St. Donatus, a pension of forty scudi, that is, 2,128,000, was granted by the Supreme Pontiff Pius IX by his own motion on the 13th of February, 1855; this pension was imposed on the canonical position which he held in the Cathedral Church. By his own motion and out of pure liberality, We grant you an annual pension of forty scudi of said money on all and each of the fruits, revenues, and proceeds of said canonry, and also on the distributions, as long as you live, or to your legitimate procurator, to whom this has been expressly agreed, and to your successors.

[*Latin ed. p. 555*]

"PENSIONIS 555," a benefice, and to be provided for during his lifetime, in each year, with two equal payments. The canonical benefice, at the time of the imposition of the pension, consisted of one hundred and twenty

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gold florins from the treasury. Due to the very heavy taxes imposed by the Italian Government on ecclesiastical institutions, according to the terms of the well-known decree, with the most recent document issued by the Sacred Congregation of Bishops and Regular Canons, dated January 28, 1871 (1), the Parish Priest agreed to a reduction in the pension, which was limited to 123:10 florins, and matters proceeded peacefully until May 3, 1877, when the Canon saw that, due to the unjust laws of the same Government, the number of canons in the Cathedral was being reduced to only twelve. Furthermore, according to the decree in the Bull of Nicholas V, the revenues of the Cathedral were to be combined into a single common fund to be divided among the canons present and serving, and therefore, the revenues of vacant canons were to be added to, or at least not diminished, in order to increase the income of the surviving canons; the Parish Priest, John Baptist, in April of the year 1878, demanded that the entire pension due to him be paid, according to the Sacred Congregation of Bishops and Regular Canons, to which, in the same decree, with the most recent document, the power to hear such petitions was assigned. Faced with the opposition of the canons, the matter was brought before the authorities, with reasons being presented from various sides, which are briefly summarized in our account. The Cathedral Chapter itself stated that, before the aforementioned reduction in the number of canons, it consisted of sixteen canons, including the Archdeacon, as well as twelve beneficed clergy, and twelve clerical benefices, and that all the revenues of the Cathedral were to be included in the common fund. Therefore, according to the sacred canons, all revenues were to be applied to daily distributions, and each payment was to be made up of three parts, of which two represent profit, while the third is added to the fund for the purpose they call "service," and is divided among the canons present, taking into account who contributes the most to the choral service.

(1) Cf. Acta s. Sedis T. VII. p. 325.

[*Latin ed. p. 556*]

556. Concerning the pension of the chapter. Therefore, the distribution of the common revenues was established in such a way that the Archdeacon would receive double the income of each canon, the canon would receive double the income of each beneficiary, and the beneficiary would receive double the income of each clerk-beneficiary. Thus, the entire sum was divided into twenty-four parts, of which seventeen were assigned to the canons, sixteen to the Archdeacon because of the double amount owed to him; six parts were assigned to the twelve beneficiaries, and three to the twelve clerk-beneficiaries. According to this law, the twelve beneficiaries are equal to six canons, and three canons are equal to twelve clerk-beneficiaries; or, which is the same thing, each canon receives half the Archdeacon's income, double the beneficiary's income, and four times

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the clerk-beneficiary's income. Given these circumstances, the revenue from vacant benefices is divided in such a way that two parts increase the income, and one part is for service. In the present state of affairs, each canon receives a free portion for the income earned, amounting to approximately 933 in the annual accounts. This sum, which the deceased Canon I used to receive, is to be ceded to the other canons; after deducting this amount for their full pension, 218:80 remain to be divided, and there are still 720 to be distributed, which could amount to 1187, to which a third part is added for service. From this, he argued that if he were alive, and another canon had died, he would receive the full pension; for the Bulla of John, in which the burden of the pension was imposed, indicated an annual revenue of one hundred scudi from the chapter's treasury, while the actual receipts of each canon amount to at least 1300. However, he claimed that he possessed the same rights that Canon I could have invoked, and therefore, the chapter was obligated to pay the full pension, just as it would have paid it to Canon John if he were still alive. WHAT THE CANONS OBJECTED TO. Presenting a calculation of the revenues, before the conversion of goods and extraordinary taxes of the clergy, the canons insisted on a reduction in the pension, citing the following reasons: 1. The Bulla of Nicholas V, through which, on the occasion of a vacancy...

[*Latin ed. p. 557*]

The revenue from a vacant benefice is customarily divided among the surviving clergy and the choir members, and this has always been considered honorable. It is a matter of record that, based on this principle, the Chapter has obtained, before the Chamber designated "from Spoils," and also before the Italian Royal Domain, the right to divide the revenue from vacant benefices among the surviving clergy. Indeed, since the surviving clergy take the place of the deceased benefice holder, it is just that they receive a greater share of the revenue, due to their greater labor and service. Therefore, the revenue from the vacant canonry, due to the death of the former holder, should be divided among the surviving clergy. 2. The decree, recently issued, has destroyed the law by which the Royal Cathedral is governed. However, if the surviving clergy take the place of the deceased benefice holder, there is no reason for the pension holder to claim that the relationship between him and the deceased should be altered. Furthermore, it is necessary to act in this way because the decree was recently issued due to taxes by which the secular government seeks to burden ecclesiastical property. Therefore, if the cause persists, and its effects must continue, the taxes that diminish the revenue from the vacant canonry must also continue to diminish the pension to be paid. If the parish priest were to receive the full pension, he would not bear the burden of the taxes; whereas, on the contrary, the Chapter members would pay these taxes twice: directly to the government, and indirectly to the pension holder due to the

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ungranted reduction. They argued that if the deceased had left a distinct provision, the pension holder would have requested a remission of taxes from the government upon the vacancy, and would not have obtained it. The same principle should apply with respect to the Chapter. Furthermore, they observed that the revenue from several vacant benefices, diminished by the taxes imposed, does not equal the increase in revenue that they currently enjoy from a single canonry, but rather, this increase comes from other vacant benefices, which cannot be filled due to the lack of clergy, and whose duties are performed by the surviving clergy, who are therefore burdened by greater service. After these various arguments were presented, a response was given on January 23, 1880, in the General Congregation regarding the aforementioned question, which will be discussed below. This matter is to be postponed until the first meeting after the next, and it should be written to the Bishop who...

[*Latin ed. p. 558*]

558 The official shall transmit a statement of the revenues, both of past and present endowments of the Chapter, as they are actually and factually distributed. CAUSE FOR INVESTIGATION. The Bishop, following the custom of the Sacred Congregation, used to complete the rendering of accounts made by the Chapter with the following factual details: "1. Forty Chapter members belonged to the Cathedral Church; namely, the Archdeacon, fifteen Canons, twelve Beneficiaries, and as many Clerks – Beneficiaries. "2. The revenues were derived from grain, tithes, and money. "3. The Chapter lacks specific allocations: the Supreme Pontiff Nicholas Y. did not admit even the name of any such allocations. All goods are common property, and their revenues are absorbed by daily distributions, divided by days and hours. If someone is absent for hours, days, or years, he loses the corresponding distribution, proportionally for the hours, days, or years; except during jubilees and holidays, as well as during the time of the three conciliar months. "4. The absences of some increase the benefits for others. Hence, the terms "lucrative point" and "service point" are used. A "lucrative point" is that which each person earns during the days and hours in which he participates in the choir. The "service point" is added to the absences and contributes to the reward of diligence among those present. "5. Before the Italian dominion encompassed all things, the division of revenues was customary in such a way that, after deducting the ordinary expenses, as well as a portion for extraordinary and unforeseen expenses, the remainder was distributed among the individuals. What each received was called "taxation." What remained from the accumulated expenses and any remaining sums was distributed at the end of the year. These were called "super-taxations." Nothing of this kind remains at present. "6. The division was customary in such a way that each beneficiary received one part, a beneficiary received double, a Canon received four times as much, and the

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Archdeacon received eight times as much. This proportion still holds today. "7. From these details, it can be deduced that the revenue in the granting of benefices was..."

[*Latin ed. p. 559*]

589. The pensions, as expressed in the decrees of St. Datarius, are to be understood in a demonstrative, not a prescriptive, and actual sense.

8. Besides the distributions mentioned above, there are two others: one for singing, and the other granted for anniversaries and nocturns. The first is given to Canons and Beneficiaries who sing at the conventual Mass, the Vespers of feast days, and other functions celebrated within the year. To this distribution, neither the Archdeacon nor Clerics in benefice are admitted, but only Canons and Beneficiaries, and among these, those who perform the service, either personally or through others. The second distribution concerns attendance at Mass with singing in the morning, or the nocturn office for the dead during the Lenten season, which is recited with great devotion. The majority of the revenue for these distributions comes from the wills of deceased prelates. Only those present participate in these distributions, neither the infirm nor those who are jubilant.

9. Since the years 1829 and 1830, the Chapter had leased certain estates for a period of 45 years, with pensions established which are now the lowest. Without a doubt, the Chapter would have experienced a notable increase in revenue from new leases, had the Italian government not acquired these properties. To the increase in pensions, one must add whatever is derived from the sale of grain at a higher price. These two sources, combined, would increase the Chapter's revenue by more than double today.

The following are the NEW DEDUCTIONS of the Chapter, as reported by the Ordinary. The Chapter argued that, since the revenues remaining in the Cathedral Chapter after vacancies are rightfully increased by the surplus, and since the right of increase is a mixed thing, combining benefits and burdens, as stated by Vinnius (Part I, Book 1, Chapter 44) and in the law of St. §. ult. concerning movable property, where it is argued that when a portion is recognized in a debtor, the portion already acquired necessarily increases with its burden, it follows that, even with its utility, such a burden of an auction cannot be rejected by another. Furthermore, it is evident that, guided by equity, the parish priest, as the plaintiff, has accepted a reduction in the pension; and according to the well-known principle of Reg. 21 in 6, that which has once pleased cannot be displeasing thereafter. For...

[*Latin ed. p. 560*]

560. The title of pension, like usufruct, ought to bear all the burdens that are imposed upon fruits, and in all circumstances be subject to them. *Tondut. de pens. Eccl. Cap. VI. n. 8; Gigas de pens. quaest. 89 n. 4; Gargias de benef. part. 1 Cap. V. n. 201; Barbosa prax. excip. pens. part. 1 quaest. 10

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n. 13.* It is said that the Sacred Congregation of the Council in Mazarien decreed that the burdens ought to be divided in proportion between the beneficiary and the pensioner. *contributionis onerum 14 Dec. 1878.* And the same theory was maintained in the decree *Cum nuperrimis* with the words: "pensions ought to diminish or cease, when the revenues of the benefice have been diminished or entirely lost." From the accounts presented, it appears (it is added) that if the canon were still living, he would not receive more than 1015:44 florins, that is, an increase of 63 florins and 22 centimes above the revenue received in the year 1879. Therefore, it would be unjust for the one who is absent from the choir, and who has not paid his dues, to receive the entire distribution of the revenue, and to make the condition of the titular worse than that of the pensioner. With these things newly presented, a question was proposed at the plenary meeting on May 7, 1880: Whether and from what time should the pension of 245 florins be fully paid by the Reverend Chapter to the priest John Baptist in this case?

RESOLUTION. The Most Eminent and Reverend Fathers, having considered the matter, judged that the answer should be: No, but for the present, considering the particular circumstances occurring in this case, the pension should be paid to the pensioner B in the amount of 150 florins.

FROM THESE, THE FOLLOWING ARE DEDUCED:

I. The decree *Cum nuperrimis* should always be applied, when there has been a loss or diminution of the revenue of the benefice.

II. Since the statutes already provide for a proportional diminution of revenue between the beneficiary and the pensioner, it is not permissible to depart from that.

[*Latin ed. p. 561*]

PENSION §61 III. Nevertheless, if it is established that the beneficiary's condition has improved compared to the time when the reduction took place, a proportional increase in the pension should also be permitted. IV. Therefore, the Sacred Congregation has judged that a fixed pension, exempt from all burdens, should not be granted in *summa*, but, considering particular circumstances, has decreed that a pension should be paid for the present in the *summa* of 150 livres, instead of 123 livres and 10 sous.

CONCERNING THE INTERPRETATION OF A LEGACY FOR A DOWRY. July 9, 1880.

SUMMARY OF THE CASE. Canon Caietan Torello, in the year 1706, by means of his will, ordered that a certain sum be constituted as a perpetual endowment, from the revenues of which a dowry should be provided each year for the poorest and most virtuous girl from Brescello. The Archpriest,

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who has held the parish of this town since 1871, found that the pious legacy for the dowry had already been suspended. After overcoming and resolving certain difficulties regarding its administration, the matter now stands such that the dowry can again be provided. However, he believes that there is no rule, to be safely followed, regarding the granting of this dowry, from which ancient practice is entirely ignored. Therefore, the Archpriest has requested the opinion of the Sacred Congregation of Bishops and Regular Canons: whether it is sufficient for the girl who desires to receive the dowry to reside in the town, or whether it is also required that she be born in that place.

SYNOPTIC SUMMARY. First of all, setting aside the matter of residence, it should be noted that if the girls belong to the territory of Brescello, then, by both civil and municipal law, they are admitted to the legacy, since they are part of the place designated by the testator. Law 147 ff. concerning the meaning of words, thus decrees...

OBSERVATIONS FROM THE OFFICE. Vol. XIII, part 1, title 36.

[*Latin ed. p. 562*]

562 INTERPRETATION OF THE WORD "CITY": "Those who are born within the boundaries of a city are understood to be born in the city." Jurists follow this comprehensive interpretation, except in the case where penal law, censure, or any other odious provision would apply, as Gratian states, *Decretum*, title *Decretalium*, chapter 217, number 2 and following: "The appellation of a city, in a strict sense, refers only to that which is enclosed within walls, etc. Whatever else is commonly called a city, such as camps and villages, is understood by the appellation of a city, especially in matters of benefit, where words are interpreted most broadly." And Ferraris, in the vocabulary, number 87, states: "The appellation of citizens also includes those born in the countryside, or in the suburbs." Especially in matters that are favorable and that pertain to both; but the name of the territory refers to everything that is within the boundaries of the place, together with the place itself; *Leges Salicae*, title *De Puerillis*, §. Regarding the meaning of words. Furthermore, someone born in the suburbs and within the boundaries of a town is considered the same as someone born in the town, as stated in *Leges Salicae*, title *Qui ex vico*, and in *Leges Salicae*, title *De Municipiis*. However, in a decision by the Rota, cited by Moricelli in his collection of legal formulas, volume 2, number 1, it is stated: "The evident basis of the resolution was that, while Laurentius, the testator, ordered that dowries be distributed to the girls, and he mentioned 'the parents of Siena,' under the name 'Sienese,' only those born within the city, the suburbs, the town, and the district are included, according to the text in *Leges Salicae*, title *Qui ex vico*." From these principles, it does not seem to present a great difficulty to admit girls who belong to the district or territory of the city. IT SEEMS THAT DOMICILE IS SUFFICIENT. However,

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this cannot be asserted, since the interpretation concerns the laws that arise from domicile and residence. Ulpianus, in *Leges Provinciales*, 190 and following, regarding the meaning of words, responded: "We must consider as provincials those who have their domicile in the province, not those who are originally from the province." From this response of the jurist, Alciatus argues that someone is designated by reason of domicile rather than by reason of origin, in his commentary on the aforementioned law, number 1; and the Glossa in chapter *Statutum*, §, when speaking of the rescript in 6, stating that citizens and inhabitants are taken promiscuously: "We are taught that someone is called to civil duties by reason of origin and domicile, *Leges Salicae*, title *De Originalibus*, 4. Hence, unless the matter is about...

[*Latin ed. p. 563*]

INTERPRETATION 563. Some authorities hold that, even if a disposition explicitly mentions the place of origin, those who are considered citizens by reason of residence and domicile appear, from the text in law 44 ff. concerning exemptions, to enjoy the privileges of citizens. Therefore, domicile acquired by intention and action, or, if there is doubt about intention, by presumption arising from a period of ten years, confers the rights and related privileges. Indeed, the authorities seem to agree that, in the succession to a certain benefit, without any limitation of origin, the succession arising from domicile, whether by the title of citizen or by privilege, is also included. See *Riganti Regni*, 14 *Cancell.*, n. 149 and following. "Under a privilege stating simply that benefits are conferred only to citizens, not only 'originarii' and naturally such, but also citizens by privilege..." Furthermore, Amostatius, in book 4, chapter 1, n. 58, concerning pious causes, states: "When girls of a certain town are called to similar inheritances, not only those of that origin are to be admitted, but also those who have resided there for ten years, even if they have come from elsewhere, provided they have the intention of remaining there, for a residence of ten years with the intention of remaining there makes everyone a natural [citizen]." On the other hand, it must be noted that, in the granting of the dowry of which we are speaking, the testator's presumed intention of benefiting true citizens, and not outsiders, who have acquired citizenship, should always prevail. Regarding this, Valenti Voto 4, n. 31, states: "If, therefore, it is said that a certain natural affinity exists among those who are born in the same place, a just reason requires that we interpret the dispositions of testators in such a way that we understand them to refer to true citizens, or true natives, in accordance with that presumed intention of benefiting the people of that place, and so that they are not excluded by outsiders under such a false pretense; Card. De Luca, *De Praeemiû. Discept.*, 36, n. 5."

DOMICILE DOES NOT SEEM SUFFICIENT. Furthermore, the Sacred Rota has declared that acquired citizenship is beneficial for acquiring the

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rights pertaining to citizens in general, but not...

[*Latin ed. p. 564*]

564. INTERPRETATION: The laws pertaining to natural and original citizens. Decree 982, *Corpus Iuris Civilis*, Mohnes, n. 8: "Nothing prevents that those who are citizens by fiction and by accident be considered true and original citizens," because such a citizenship, although accidental, is sufficient for them to acquire those rights and privileges which belong to citizens in general. However, concerning the acquisition of rights, specifically those pertaining to the benefit of natural and original citizens, from whose name one can never exclude citizens acquired by fiction, or by privilege, or by any other accidental means, it must be understood that true, natural, and original citizenship is not acquired except through birth and origin within the city. Indeed, Amostatius, in the aforementioned passage, speaks of pious reasons, saying: "I admit the sentiment of Lord Lara, that only an extension should be made to the suburbs and neighboring villages of the city. The reason is because, although the laws may be more favorable, if they leave the matter to a specific place, an extension should not be made to the detriment of a third party; but only that which can be done according to the most probable will of the testator." It has also been noted that the Sacred Congregation of the Council pays great attention to the designation of the place made by the testators, as can be seen from the documents of Rome and Fermo, dated September 4, 1860. Therefore, if the term that indicates the origin limits the title of citizenship, the force of the argument is increased in this matter; for the testator purely and simply ordered that the dowry be given to a poorer and honest girl from Brescello. Furthermore, from the *Sacra Rota*, decree 496, n. 8, page 4, we are reminded that the words in a disposition, and conceived in the common language, must be understood properly, and not in a civil sense. Having briefly stated these things, the following question must be resolved: Can a poorer and honest girl, who has her domicile in Brescello, or who was born in that place, acquire the dowry in question?

RESOLUTION: The Sacred Congregation of the Holy Office and Regular Canons, after deliberation on July 9, 1880, decided: Affirmative to the first part; provided that it is proven that she has a legal domicile there; negative to the second part.

[*Latin ed. p. 565*]

INTERPRETATION 565 From which [points] one may gather: I. Therefore, in order to obtain this kind of dowry, it is not only necessary to admit girls who are from Brescello, but also those who have resided there for a decade, with the intention of remaining there, even if they originate from elsewhere. II. For, unless the matter concerns a provision that expressly speaks of origin, those who are considered citizens by reason of residence

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and domicile enjoy the privileges of citizens. III. From the provincial laws, in the sections concerning the meaning of the word "citizen," it is known that Ulpian stated: "We must consider as citizens those who have their domicile in the province, not those who are originally from the province." IV. From Ulpian's response, jurists argue that a person is designated by a certain place more by reason of domicile than by reason of origin; and the appellation of "citizen" includes the inhabitant of a certain place, and both citizens and inhabitants are generally accepted with regard to civil duties. BRIEF: Special Indulgences are granted, so that the custom of making sacred pilgrimages to the most important shrines, both in Rome and throughout Italy, may be spread more widely. LEO PAPA XIII For the perpetual remembrance of the matter: Since, as has been reported to Us, the pious work of the Catholic Congresses (which, as is asserted, has been canonically established in Italy), and also the Societies legitimately associated with that work, are undertaking sacred pilgrimages to the most important shrines, both of this, Our beloved City, and of all of Italy, with great benefit to both.

[*Latin ed. p. 566*]

Brief gatherings of the Christian faithful are commonly held. We have therefore deemed it fitting to open the heavenly treasures of the Church, those entrusted to Us by the Most High, so that this salutary and fruitful custom may be spread and increased more and more each day. Wherefore, confident in the mercy of Almighty God, and by the authority of the blessed Apostles Peter and Paul, We grant to all and each Christian faithful of both sexes, who, wearing the Pilgrim's Cross upon their breast, have undertaken any of the aforementioned sacred pilgrimages, that if, on the day they visit the church or sanctuary to which they are making their pilgrimage, they are truly penitent and have confessed their sins, and have received Holy Communion, and there offer devout prayers for the concord of Christian princes, the eradication of heres and the exaltation of the Holy Mother Church, provided that no plenary Indulgence is granted there, so that they may, by the power of Our Apostolic authority, obtain a plenary remission of all their sins and indulgences. Furthermore, We grant to all and each of the aforementioned Christian faithful, who, in the year in which they have undertaken any of the aforementioned pilgrimages, on the sixth day immediately following the octave of the Most Holy Body of Jesus Christ, and the feast of the Immaculate Conception of the Blessed Virgin Mary, devoutly visit their parish church from the first vespers until sunset for these days, and also, as stated above, offer prayers, a plenary remission of all their sins and indulgences. Finally, We grant to the same Christian faithful, who, having completed any of the aforementioned pilgrimages, have not ceased to wear the Cross, even beneath their clothing, and who, during the year of the pilgrimage, have recited, at least with a contrite

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heart, the Our Father, the Angelic Salutation, and the invocation beginning "Glory be to the Father," once a day, a remission of three hundred days from the penances enjoined upon them or from any other penances they may owe, in the form customary in the Church. We also grant that all and each of these indulgences, remissions of sins, and relaxations of penances may also be applied to the souls of Christian faithful who, united with God in charity, have departed this life, as a form of suffrage. These decrees are valid for ten years.

[*Latin ed. p. 567*]

BRIEF 56 7, having such validity. We desire that these present letters, whether transcribed or printed, and signed by the hand of a public Notary, and secured with the seal of a person holding ecclesiastical office, be held to have the same validity as if the originals were exhibited or shown. Given in Rome, near St. Peter, under the Fisherman's Ring, on the 6th of May, 1881, in the fourth year of Our Pontificate. L. S. Tu. CARD. MERTEL. FROM: Declaration concerning the Holy Congregation for Matters of Incest, with respect to the dispensation granted between betrothed persons, concerning marriage. Holy Congregation of the Sacred Office, IV. 1st of August, 1866. DECLARES: "Dispensations, whether granted directly by the Apostolic See, or by Pontifical delegation concerning any degrees of consanguinity, affinity, spiritual or legal relationship, as well as public decency, are to be considered void and of no effect, in every place and in every way," if, before the execution of such dispensations, or before or after their obtaining, an incestuous act has been committed, and if, whether questioned or not, either party has maliciously or even unknowingly concealed the incestuous relationship between them, whether it be publicly known or hidden, or has concealed the circumstances and intentions with which they entered into that relationship, in order to more easily obtain the dispensation. It suffices that one of the betrothed parties has confessed this fault, or has revealed this nefarious intention.

[*Latin ed. p. 568*]

568 FROM THE APOSTOLIC PENITENTIARY. On June 7, 1842 (1). The Bishop of Namur, through a most urgent letter, requested from the Apostolic Penitentiary the faculty of granting valid dispensations, concerning affinity, which would be invalid due to the impediment of affinity, arising from a carnal union or premarital relationship that the petitioner or petitioneress had with a deceased spouse, before their marriage to that spouse: so that, without a new recourse to the Holy See, the petitioners would not be exposed to the danger of incontinence, which is almost always to be feared. The Sacred Penitentiary, on June 7, 1842, having maturely considered the aforementioned requests of the Most Reverend Father Bishop of Namur, and having reported them to His Holiness Pope Gregory XVI,

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and with His Holiness approving, responded to the esteemed Bishop: "The dispensations in the cases presented are to be valid." (2). Declaration of the Apostolic Penitentiary concerning the conditions of the present Jubilee. On April 2 of the current year, 1881, the Sacred Penitentiary, concerning the alms prescribed in the Apostolic Letters "Militans Iesu Christi" of March 12 of the same year, gave the following response: "Among the pious works indicated in the Apostolic Letters, the support of the poor is also included." (1) This response is placed in the archives of the aforementioned Tribunal under the date of this day; although it is placed under the date of March 20, 1842, in the Instruction of the Sacred Congregation for the Propagation of the Faith, as related by us, volume X, page 291, *ad hoc*. (2) This response seems to have provided an opportunity for the practice of some Bishops; who, when dealing with marriages to be entered into between persons of the first and second degree of affinity, also investigated whether there had been an illicit union between those same persons and their deceased husband or wife, from which affinity arises from a lawful union. And if they found that there had been an illicit union, then they considered that a double dispensation was required, or was to be required, namely, concerning affinity arising from an illicit union or premarital relationship, and concerning affinity arising from a lawful union or marriage. However, through this response, every doubt is removed concerning affinity arising from an illicit union; since dispensations are declared valid in which no mention is made of an illicit union. And therefore, the single dispensation concerning affinity arising from a lawful union includes also affinity arising from an illicit union, or premarital relationship. And this response was declared general through the Letters of the same Sacred Penitentiary of December 10, 1874.

[*Latin ed. p. 569*]

869 SUMMARY OF THE ACTIONS CONTAINED IN THIS VOLUME XIII: «—HB—» APOSTOLIC LETTERS AND ADDRESSES: Letters of His Holiness Pope Leo XIII to the president and members of the Academy of St. Thomas established in the Seminary of Parma, page 3. Address of His Holiness Pope Leo XIII, given on August 20, 1880, to the Most Reverend Cardinals in the Vatican. . . » 49 Apostolic Letters in the form of a Brief, concerning St. Thomas Aquinas, the Heavenly Patron of the best studies, for his adoption. » 56 Encyclical Letter of His Holiness Pope Leo XIII to the Patriarchs, Primates, Archbishops, and Bishops throughout the Catholic world, possessing grace and communion with the Apostolic See. . » 145 Letters in the form of a Brief, by which plenary and partial Indulgences are granted to the Churches of St. Vincent de Paul. » 154 Letter of His Holiness Pope Leo XIII to His Most Reverend Cardinal Guibert, Priest of the Holy Roman Church, Archbishop of Paris. » 193 Address of His Holiness Pope Leo XIII, given on December 13, 1880, to the Most Reverend Cardinals in

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the Vatican. » 198 Encyclical Letter of His Holiness Pope Leo XIII, to the Patriarchs, Primates, Archbishops, and Bishops throughout the Catholic world, possessing grace and communion with the Apostolic See. . » 241 Letters of His Holiness Pope Leo XIII to the Archbishop of Dublin, in which he exhorts him and his colleague in the episcopacy to see that the people of Ireland do not transgress the bounds of equity and justice in the present unrest. » 248 Letters of His Holiness Pope Leo XIII, by which the spiritual jurisdiction and title of the Bishop of Tournay are absolutely taken away from the Prelate Edmund Dumont. » 289 Letters of His Holiness Pope Leo XIII, by which Isidore Joseph De Roussaux is named Bishop of Tournay. » 337 Letters of His Holiness Pope Leo XIII to the Reverend Canon Lebeurier of Aurelian, General President of the Apostolic Association. » 338 Apostolic Letters of His Holiness Pope Leo XIII, by which an extraordinary Jubilee is proclaimed. » 385

[*Latin ed. p. 570*]

A SUMMARY of Letters in the form of a Brief from His Holiness Leo XII, in which the faculties already granted to Ordinaries of the Austrian Empire concerning the alienation of ecclesiastical goods are reiterated. 433 The Constitution of His Holiness Pope Leo XIII, in which certain points of contention between Bishops and Regular Missionaries of England and Scotland are defined. . . . 481 Letters from His Holiness Leo XII to Bishop Pineroli, in which he expresses his joy that he adheres to the doctrines of the Angelic Doctor, setting aside others. 529 FROM THE CONSISTORY ACTS Concerning the Consistory held on August 20, 1880 . . . 97 Concerning the Consistory held on December 13, 1880 251 Concerning the Consistory held on May 13, 1881 499 Concerning the Consistory held on May 13, 1881 530 FROM THE SACRED CONGREGATION OF THE COUNCIL: Patrimony. It is questioned whether a sacred patrimony, which has not been formally established, can be restored through a private agreement to return its fruits, secretly initiated between a cleric's uncle and the sacred patrimony itself. . . . . 4 Concerning Parochial Rights. The Archpriest and three perpetual Vicars inquire whether they must exercise the care and jurisdiction of the parish in the same manner. 10 CONCERNING the functions of Dismemberment and the performance of sacred rites; it is debated whether the causes are present, as required by law, for a proper dismemberment to be carried out, and whether the Chapter of the mother church has the right to perform the sacred rites in the filial church. 60 Concerning Absolution and the reduction of Masses; grace for the remission of past omissions is granted to the heir, to whom the benefit was not delivered due to the testator's negligence. 78 Concerning the competition for a magistral and doctoral position; it is inquired whether licentiates can be admitted to obtain such positions. 81 Concerning the granting of a Theological Benefice; a theologian requests that, in addition to the fruits of the benefice and daily distri-

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butions, he may also receive other emoluments, while performing his own duties. 87 Concerning Distributions and Revenues; it is debated whether the Archpriest, absent from the choir for the sake of the care of souls, can receive, in addition to the daily distributions, extraordinary and occasional emoluments. 102 Concerning a Canonry; a canon and pensioner request from the Apostolic See a remedy regarding the past and the faculty to retain the benefice and receive the pension, established in the same benefice, without the authority of the Holy See. 109 Concerning a Competition; it is questioned whether a competition for a parish church is invalid for various reasons. Concerning a Decree; by the Most Holy Father Leo XIII.

[*Latin ed. p. 571*]

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[*Latin ed. p. 572*]

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344: Concerning a dispensation from irregularity; a young man, while engaged in theological studies, is dispensed, as if he had lost the use of his sight, although he had already been promoted to Subdeacon and Deacon.

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398: Concerning a transaction; a transaction concluded between the patrons of a benefice, reduced to poverty, and the Parish Priest, who had registered a mortgage on the funds for the protection of the debts, is approved.

436: Concerning the removal of an impediment; it is asked whether the impediment imposed by the father, to prevent his son from contracting marriage, due to mental weakness, should be removed.

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445: Concerning an Abbey; it is asked whether the abbatial dignity is compatible with two other benefices.

461: Concerning Matrimonial Dispensations; the Bishops of Catanae and Messanae request that the Most Blessed Father increase the sum established by Benedict XIV, for determining the true poor, with respect to matrimonial dispensations.

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what time a pension imposed on a canonical prebend is to be fully paid. 554 Concerning the interpretation of a legacy concerning a dowry; it is doubtful whether the girls have sufficient means, or whether the origin of the dowry is also required. 561 From S. CONG. RITUUM Concerning Confraternities of the Most Holy Stigmata; a warning regarding litanies, whose recitation can be publicly permitted by the Bishops. 91 Concerning the validity of congregations. 127 Concerning Matrimony; instructions for ecclesiastical courts regarding the confirmation of marriage from time immemorial.

[*Latin ed. p. 574*]

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230 Declaration concerning the inscription of the absent, whether in pious unions or confraternities.

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[*Latin ed. p. 576*]

576 CONCLUSIONS WHICH HAVE BEEN NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBJECT MATTER OF WHICH IS AMPLY EXPLAINED OR DISCUSSED IN THE INDIVIDUAL

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ACTS. These conclusions are included under the following terms: Privileged Altar. Ecclesiastical Benefice. Canonry with respect to collation. Confraternities. Custom. Dismemberment of a Parish. Choral Distributions. Christian Doctrine. Daughter Church. Excommunication. Exemption. Parochial Rights. Parish Priest with respect to distributions. Episcopal Jurisdiction. Right of Patronage. Parish Priest with respect to examination. Legacy of a Dowry. Parish Priest with respect to resignation. Marriage. Mass with respect to almsgiving. Parish with respect to union. Mass with respect to repetition. Pension. Masses with respect to reduction. Magistral Prebend. Obligation of Masses. Theological Prebend. Option with respect to Canonry. Transaction. Religious Orders with respect to burial. Privileged Altar. The first question, with respect to the theoretical aspect, seems perhaps not to have been intended, since it rather pertains to the Most Holy Congregation of the Roman Inquisition: to which are submitted cases pertaining to dogma; while the Most Holy Congregation of Indulgences discusses the doubt concerning indulgences arising from the relics of the Saints or from indulgences, page 142. However, with respect to the practical aspect, it seems to have been clarified for a long time; for it has always been the constant practice of the Church that an Indulgence be attached to a privileged altar, to be gained by only one soul, united with God in charity, in one and the same Mass. Ibid. Moreover, the first question, considered in practice, seems to have been clarified by the resolution of the second question, for the Most Holy Congregation responded: that the Indulgence is limited to only one person in each Mass, even among many confreres for whom Masses are usually offered, Ibid. Since the acquisition of Indulgences does not depend on the intention of the celebrant, but on the intention of the granting authority and on divine acceptance; hence, even if the sacrifice is offered at the privileged altar for many in general, the Indulgence benefits only one of them, if such is the intention and limitation imposed by the authority of the keys, Ibid. It suffices for the celebrating priest to intend to gain the Indulgence at the privileged altar, according to the intention of the granter, for the brothers and benefactors, so that the soul, one of those for whom prayers are offered, and which is pleasing to God, may receive the In-

[*Latin ed. p. 577*]

INDEX GENERALIS: The effect on the entire race can be achieved thereby. It also appears that, even if only one soul receives the benefit of indulgences while united with God in charity, the merit of the sacrificial offering will nonetheless be efficacious for all brothers, relatives, and benefactors, for whom sacrifices are customarily offered at the privileged altar, thereby.

Ecclesiastical Benefices: According to the general rule and the prescription of the canons, ecclesiastical benefices are to be conferred upon suitable

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persons, page 205. Many things are greatly to be desired in order that someone may be deemed suitable for a benefice, namely, the advancement of the clerical order, age, doctrine suitable for the office, and integrity of morals, thereby. Therefore, the Council of Trent, Session 24, chapter 12, decreed: "Therefore, let no one henceforth be promoted to any office in which the care of souls is involved, unless he has reached at least the age of 25, and has been engaged in the clerical order, possessing the doctrine necessary for the execution of his office, and is recommended by the integrity of his morals," thereby. Sometimes, a dispensation is granted by the Apostolic See regarding the impediment of age, especially if the case concerns those who are passively called, and a legitimate reason is present, thereby. In ecclesiastical benefices, which require residence, either by law or by custom, only a temporary dispensation is granted, Volume XIII, Title CINI, paragraph 577, for true and reasonable reasons, page 206.

The Council of Trent, in order to restore ecclesiastical discipline, decreed in Session 24, chapter 17, that only one ecclesiastical benefice should be conferred upon each person, especially if one is sufficient to sustain a life with honor, page 467. The conciliar decree, by which the plurality of benefices is disapproved, also includes benefices of lay patronage, provided that they are true ecclesiastical benefices; and with respect to them, the reasons of common law and of the same Council do not cease, thereby. Neither can a third ecclesiastical benefice be obtained, without a special Apostolic indult, even if the two previous ones are not sufficient for a decent livelihood, thereby.

Ecclesiastical benefices are also incompatible, because of their consistency under the same roof, namely, in the same church; both because the same church is deprived of the ministry of one person, and because plurality in the same church generates envy among brothers, page 468.

Canonicates: Regarding collation, the Council of Trent, Session 25, chapter 9, concerning reforms, abolished all privileges, previously existing by the favor of the chapters, regarding the right to nominate, elect, and present candidates for vacant prebends, and decreed that they should be conferred freely and with full effect by their collators, page 318.

[*Latin ed. p. 578*]

578 INDEX G. Quod quidem commune ius est, Episcopi sunt ordinarii collationis canonici et beneficiorum ecclesiae suae. p. 319. Immo, ex communi iure, neque sede vacante, habent canonici ius beneficia conferendi libera collatione, sed tantum institutionem concedere possunt, praesentatis a patronis, ibid. Nec potest dici iura canonici quasi reviviscere postliminio, ex quo abolita sit praefata conventio per gubernium italicum; nam hoc admisso, ius commune et regulae Cancellariae semper remanent, ibid. Confraternitates: Funera, exequiae et Missae cum cantu pro confratribus in ecclesiis confraternitatum impleri debent a cappellanis eadem, neque

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parocho praesentia ullimodone requiritur, p. 20. Confraternitates in oratoriis publicis, ab ecclesiis parochialibus seiunctis erectae, nullam habent dependentiam a parocho, quoad functiones quae non sint parochiales. p. 26. Locorum ordinarii habent ius interessendi congregationibus confraternitatum per se, vel per delegatam personam, ad ordinem promendum; attamen, iuxta regulam generalem, haud suffragium ferre valent, p. 132. In materia praecedentiae, prius attendenda est dignitas: ita ut semper praecedere debeant digniores prae minus dignis, p. 166. Inter pares autem, praecedentia, iuxta regulam - qui prior est in tempore, potior est in iure - illi est debita qui in quasi possessione ac iure praecendendi iam reperitur, ibid. Cum probationes deficiant ad evincendum cuicum, ex confraternitatibus litigantibus, faveat quasi possessio, iure constitutum est, eos praecedere debere, qui prius sacis usi sint. ibid. In aliarum probationum deficiendam, plurimi facienda est observantia, ad cognoscendum quisnam praecedere debeat inter confratres, de cetero pares. ibid. Eruitur ex resolutione sacrae Congregationis Indulgentiarum diei 28 Aprilis 1761, atque ex praesenti declaratione, irritas esse adscriptiones Christifidelium, extra limites Dioecesis degentium, in qua localis sodalitas erecta est. p. 270. Quoad sodalitates universales, requiritur, etiam nunc personalis adscribendorum praesentia; qui tamen adire valent vel moderatorem Sodalitii vel alias delegatas aut subdelegatas, in variis centris, personas, facultatem adscribendi habentes, p. 271. Nulla datur exceptio a lege generali de non adscribendis absentibus, quoad Sodalitia proprii nominis, quae strictiori sensu collegia appellari queant; eoquod ex sui natura candidati expetunt praesentiam, qui probationem, vel novi-

[*Latin ed. p. 579*]

INDEX (General). It is determined whether a person must perform a penance, or wear a scapular, habit, or cincture, ibid. However, the authority of this instruction is granted to the moderators and delegates of these Sodalities, whatever they may be called, so that in particular cases they may dispense from the prescribed form, and properly enroll absent members, even through extraordinary exceptions, ibid. As for other Sodalities, for which there is no ceremony for enrollment among the present, the number of centers and persons who have the power to enroll should be increased, so that the force of the decree, as far as possible, may remain, ibid. Whenever the number of centers is insufficient for the work, it is granted by Apostolic benevolence that those who, for convenience, cannot be present, may be enrolled by letter, or through intermediaries, so that faithful people of good will may not be deprived of the benefit of enrollment, contrary to the intention of the decree, ibid. Custom. Neither the custom of other dioceses, nor capitular statutes, even if confirmed by the authority of the Bishop, can override Papal Bulls, because neither the Chapter, nor the Bishop, can do anything contrary to the acts of the Holy See, page 86. Although, according

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to the canonists, a custom of a hundred years is a better title to property, by means of which everything is prescribed, everything is changed, nevertheless, it is established that nothing is of use if it lacks the necessary requirements, page 132. Therefore, no custom can arise contrary to laws, which are expressed in clear words, which admit of no observance in an interpretative, presumptuous, or prescriptive sense, ibid. Nor is any interpretation of will, or any kind of observance, admitted: which is not given in clear words, and where no ambiguity is found, ibid. Therefore, a custom contrary to a clear law is, from the beginning, infected with a defect, opposed to reason, and is like an abuse, which cannot become stronger with the passage of time, ibid. A custom of a hundred years, as we have often said, is a better title to property; so that it even seems to presume Apostolic approval, although it has not been proven, page 179. In matters concerning funerals, local customs are very often followed; so that if they have been properly introduced, prescribed, and approved, they obtain the force of law, ibid. According to the consensus of the doctors, although some rights, such as parochial rights, resist prescription, nevertheless, if there is frequent practice, a contrary custom becomes law, ibid. Hence, it seems that it is also possible to prescribe, by contrary custom, the right of the parish priest to call priests to a funeral, both according to the number prescribed by the testator or heir, and also as a supplement to the testator.

[*Latin ed. p. 580*]

INDEX GENERALIS 580 or of the heir, do not exercise this right, and concerning the pious endowments of any place, ibid., they are obligated each year to render an account to the Bishop, as the Roman Pontiffs and Councils generally decree, page 553. Hence, from the opinion of the Canonists and from the decrees of the Most Holy Congregations, Bishops can demand the rendering of such accounts each year, notwithstanding any contrary custom, even if it is not memorable, ibid.

Canonically vested clergy, in the choir, are entirely obligated to chant themselves, and not through substitutes; unless, that is, they chant aloud, in which case they do not fulfill their obligation, nor can they receive daily distributions, notwithstanding any contrary custom, ibid.

It does not seem to be simoniacal to demand certain stipends through a custom that has been approved, provided that they are not demanded as a price for a spiritual thing, but only for material matters and labor, ibid.

It may be deduced that the Carolingian pragmatic sanction can be given, because custom, by law, seems to have acquired canonical discipline and ecclesiastical sanction, page 191.

It is the common opinion that no custom is admitted that is contrary to the laws of the Council of Trent, whether it preceded the Council of Trent or followed it, ibid.

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For a custom to have the force of law and to be able to abrogate any law, it must be reasonable and legitimately prescribed, page 192.

The interpretation of a parish, based on observance, is of the greatest importance, because, by law, all ambiguities are resolved by declaring the will of the contracting parties, page 313.

From common law and from the decrees of the Council of Trent, all administrators of the fabric of any church, even a cathedral, are considered to be in office.

The favor of dismemberment is granted in cases where the distance and difficulty of access to the parish church, or the excessive number of the people, are considered to be the main causes, page 77.

[*Latin ed. p. 581*]

INDEX concerning the division of a parish, to which the Council of Trent, Session 21, Chapter 4, on reform, provides the foundation, ibid. Nor is a sufficiently valid reason prepared by the presence of chaplains for the care of souls; for pastors are preferred by the faithful, who are better able to know their flocks and to attend to them more suitably, ibid. However, in deciding on divisions, the support of the pastor must be considered above all, through a proper constitution, without which a new parish cannot be erected, according to the same Council of Trent, Session 21, Chapter 4, on reform, ibid. A proper constitution must be provided for a non-existent parish, unless it is completely secure, ibid. The roughness of roads and the distance from the parish can lead to a division being granted, even if the pastor is reluctant, provided that nothing is lacking to the new church, page 208. In this matter also, the salvation of souls is considered the supreme law: so that the Holy Mother Church retains the pastor for the people, not the people for the pastor, page 209. It is left to the judgment and prudence of the Bishops to determine what distance should be allowed for a division, and since this is not defined by law, ibid. Since such questions are matters of fact, it is proper to refer them to the prudence of the Ordinary, who better knows the nature of the places, the needs and advantages of the flock entrusted to him, ibid. GENERAL RULE 581 If there are canonical reasons, which amount to a great inconvenience in accessing the Church to receive the sacraments, a division may be granted, even if the good of souls could be served by chaplains or vicars, according to the Council of Trent, Session 21, Chapter 4, on reform, if it is deemed that the greater good of the people requires it, ibid. Choral Distributions Choral distributions are not due to clerics with respect to their title; but by reason of personal service, or because they serve the divine office, according to the Council of Trent: distributions, however, are received by those who are present at the appointed hours, while those who are absent through any collusion or without permission are deprived of them, page 107. The general law is that canons who are absent from the choir are deprived of daily distribu-

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tions: "but those who are present at the appointed hours shall receive distributions (Council of Trent, Session 24, Chapter 12, on reform): the rest... shall be deprived of them"; except for the penitentiary, who "while (in the aforementioned session, Chapter 8) he hears confessions in the church, he shall be considered present in the choir." page 173. Such a law constitutes the nature and essence of the canonical office; so that he who establishes a canonry by ordering that canons should not sing in the choir, or not sing the conventual Mass, would subvert the object of his own institution, ibid. Therefore, it is reasonable to conclude that the founder of a canonry, when imposing other obligations,

[*Latin ed. p. 582*]

582 INDEX: Furthermore, besides the common obligations of all and the specific obligations of canons, he does not wish to exempt canons instituted by him from their own common and specific obligations, but rather to impose new ones upon them. Ibid. The Council of Trent condemns the custom of receiving distributions during the time of absence, renewing the law promulgated by Boniface VIII in chapter *Concerning Customs*; this law does not simply abolish the custom, but resists it, and judges it to be unjust and unreasonable. Page 219. Indeed, "no custom can be prescribed which lacks reason, since this is considered the first and essential prerogative of custom." Ibid. Furthermore, the Holy Congregation has issued numerous decrees stating that it is not permissible for canons to make their daily distributions during the vacation, notwithstanding an ancient custom. Page 220. Nor is this custom mentioned in the chapter statutes, recognized by the authority of the Bishop, much less confirmed by the Apostolic See; since the Bishop cannot derogate from the law of a higher authority. Ibid. From the Christian doctrine, Council of Trent, Session 5, chapter 2, it is derived that it is the proper duty of pastors to preach and instruct their parishioners in the Christian doctrine, so that those who neglect this duty may be chosen and compelled, even with ecclesiastical penalties. Page 513. Moreover, the Bishops are to take care, according to the General Council of Trent, Session 24, chapter 4, that in each parish, children are instructed, at least on Sundays and other feast days, in the rudiments of the faith, and in obedience to God and their parents, by those to whom it pertains. Ibid. Therefore, the Holy Congregation, in its responses to the Bishops, always urges them to diligently encourage the pastors to fulfill this duty and to constantly oversee them in this regard. Ibid. However, experience has shown that the labor of the pastor alone is often insufficient, and therefore Bishops may be compelled to assign clerics to this duty, who aspire to be promoted to higher orders or to obtain ecclesiastical benefices; thus, the duty of teaching is imposed not only on the pastor. Ibid. Regarding the filial Church: In accordance with the spirit of the canons, heavy and excessive burdens are not usually imposed on the filial church with respect to the mother church;

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as Alexander III only instructed the Archbishop of York to ensure that due honor be given to the mother church, according to the capacity of the local church. Page 521. Concerning this matter, canonists agree that the filial church should contribute some honor to the mother church, namely a moderate annual census, as a sign of its subjection. Ibid. Of these signs of honor, what the filial church should contribute to the mother church is left to the prudence of the Bishop, in the act of dismemberment; who...

[*Latin ed. p. 583*]

INDEX of all matters considered, regarding place, the Church, the Rector, distance, the resources and customs of the inhabitants, reserve one page (522). Hence, Ordinaries act wrongly who, in fact, impose excessive burdens on a daughter church, because they act contrary to common law, against which they possess no authority, ibid. The relations between the mother Church and the daughter church are such that, while the mother Church retains its primary patronage and due honor, in all other respects, the daughter church is entirely free from the power of the Rector of the ancient Church and enjoys complete liberty, ibid. A cleric, it seems to the Propre, uses the right of domicile, who changes his residence with the intention of being promoted to the sacred orders by the Bishop of the new domicile, /)^. 526. The Bishop can promote any foreign cleric to the sacred orders, who, by reason of having acquired domicile in his diocese, becomes subject to that same Bishop, ibid. For a cleric who leaves his diocese, in order to establish a true and real domicile in another, is freed from the jurisdiction of the former Bishop, but is subject to the jurisdiction of the Bishop in whose diocese he chooses to reside, ibid. According to the Canonists, a son who is not yet emancipated is not bound to fulfill the conditions of the Constitution Speculatores for acquiring domicile, with respect to sacred ordination, as long as his father has established the domicile in a diocese other than his own, fulfilling the same conditions, ibid. Properly constituted monasteries are commonly entirely exempt from the authority of the Bishops; and the conditions added by the Bishop to the foundation of monasteries cannot invalidate the foundation of those monasteries, except for those imposed by the Holy See, in the erection of those same institutions, page 360. It has been decided by the Holy Penitentiary that Ordinarys and Rectors of places cannot, at their own discretion, use churches or houses granted to them by usurpers, nor can they erect parishes in them or provide for them independently of the Superior Regular, ibid. The parochial right is that a single pastor must be assigned to every people, who can properly know and be known by his flock, and by whom alone the sacraments can be lawfully administered, p. 18. A church, which is said to be the wife or bride of the parish priest, cannot be divided into several priests, but it will have only one priest who governs it chastely and sincerely, ibid. It is a natural vice to neglect or administer carelessly what is held in common, page 19. A

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parish, according to some authors, is so called as if from a division of care; because the Rector of the Church has the care of...

[*Latin ed. p. 584*]

.884 INDEX GENERALIS: The entire flock of souls, always gathered within those limits, belongs to the general jurisdiction, ibid. This is so, unless an exemption is proven; and the Sacred Congregation entirely cares for him who alleges an exemption, ibid. It adheres to the Tridentine decree, by which it is shown that each people should have its own exercise of jurisdiction assigned to it in ecclesiastical matters, and that this should be within its own territory; however, it does not renounce the legitimate custom that allows for plurality, insofar as, through an apostolic dispensation or by law, a Prelate can exercise jurisdiction in another diocese, ibid. Parishes can more fully perform funeral rites for the faithful subject to them, possessing the title of Churches of Confraternities; by means of which, for their own funerals or burials, everything is changed and prescribed, even the jurisdiction of another, ibid. Therefore, Parishes (unless by special law, privilege, or established custom) do not possess the power of jurisdiction to perform non-parochial functions in the Oratories of Sodalities, even though these are within the limits of their parishes, page 25. The patronage right is acquired by the Church also through the construction of a building; hence, while the first builder loses, the builder who rebuilds acquires the patronage right, page 25.

Regarding a dowry:

Girls who are natives of Brescello are admitted to this dowry, as well as those who have resided there for a century, with the intention of remaining there, even though they may have originated elsewhere. page 565. Unless it is a matter of dispositions expressly concerning those of original origin, even those who, through citizenship and domicile, enjoy the privileges of citizens are included, ibid. From the provincial laws, it is known that Ulpian said: "Provincials are those who are born there."

If there is doubt as to whether an exemption exists,

[*Latin ed. p. 585*]

INDEX GENERALIS 585 or an inheritance for which there is no right in the thing or in the person, it cannot be said to be just, nor can it cause a constant man to fall; for in this case, someone seems rather to be invited by the hope of gain, than to be deterred by fear, or to be obligated, ibid. From St. Thomas, neither servants are bound to obey their lords, nor children their parents, regarding the contracting of marriage or the preservation of virginity, when they reach the years of puberty, page 444. The contemplation of riches, when it is the cause impelling one to marriage, does not invalidate the sacrament, provided that those who enter into it, or enter into religion, do so not with a view to those riches, even against the will of their

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parents, ibid.; nor does he reject the goods of matrimony by habit or by act, page 214. Those who have been excommunicated by the Council of Trent, Session 24, chapter 1, concerning the validity of marriages, have sustained the anathema. Regarding this matter, when riches are the sole end of a family, without the consent of the parents, it can be said that the impulsive causes are not to be considered; therefore, the one who contracts marriage expressly for those things is considered to have made it valid or invalid. The parents can make it valid or invalid. ibid. From both civil and canon law, those who are driven to marriage by only frivolous and base reasons are repelled, and marriages are only valid if they are completely devoid of understanding, page 445. To demonstrate fear or aversion, which weakens and diminishes the spirit of a constant or reverential man, it must, on the one hand, consist of repugnance and opposition, and, on the other hand, of violence and coercion, page 458. However, this aversion is not caused by persuasions and exhortations: for exhortation and persuasion are nothing other than counsel to another. ibid. From Ulpian's response, jurists argue that someone is designated by a place rather by reason of domicile, than by reason of origin; and the appellation of a citizen includes the inhabitant of a place, and citizens and inhabitants are taken promiscuously, with regard to civil duties, ibid.

[*Latin ed. p. 586*]

586 INDEX GENERALIS: Quid faciendum; quod quidem non ab Apostolica Sede denegari cogitur, sed tantum excitat liberam letteram et dispensationem super matrimonium rato et non consummato, uti ibidem notatum est, et non pro dispensatione petita legibus adsunt causae, pagina 542. Hinc absque ulla iustitiae offensione possunt parentes suasionibus et cohortationibus efficere, ut filii contrahant vel deserant matrimonium; quae etsi libera esse debent, attamen fieri possunt cum alterius providendum esse quoties aut voluntatis, aut concordiae, aut animarum discrimen metui possit, ibidem.

Conditiones quas Ecclesia imponit in concedenda dispensatione pro matrimoniis mixtis, expriment obligationes in celebratione coniugii assumendas, potius quam conditiones proprie dictas de futuro, quae actu adducuntur, pagina 543. Hoc tamen sic intelligendum est, ut non liceat matrimonium ratum labefactare sine probabili prudentiae, honestatis, et aequitatis causa, arbitrio iudicum aestimanda; sed prout ne dispensatio denegatur sine capitis aut salutis aeternae discrimine, ibidem.

Ideo causarum magnitudo haud est ita extollenda, ut omnis dispensatio in matrimonio rato pene impossibilis evadat: tunc enim permoveret R. Pontifex auctoritate dispensandi super matrimoniis ratis, ibidem. Eiusmodi enim matrimonia, haud infruuntur absoluta indissolubilitate; quia deest eisdem plena significatio unionis Christi cum Ecclesia, quae perficitur carnali coniunctione, quando nempe fiunt duo in carne una, ibidem. Existente

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iusta dispensatione, non desideratur mutuus consensus; sed, etiam altero...

[*Latin ed. p. 587*]

INDEX: Those who are unwilling, the Pontiff can dispense. Ibid. The Mass concerning alms: Since no one serves with their own stipends, therefore those who work in the sacristry eat what is from the sacristry, and those who serve at the altar partake with the altar, page 261. This custom is connected to the teaching of the Apostle Paul, by which it is done that priests, while reciting the sacred liturgy, may receive alms offered by the faithful, not as a price for the Mass, but as a means ordained for the sustenance of the minister's life, Ibid. However, the inflamed desires of priests, over time, have caused these stipends to provide an opportunity for countless inconveniences or sordid dealings, which would corrupt the dignity and sanctity of the sacrifice. Ibid. The Roman Pontiffs and Councils have repeatedly condemned whatever is harmful to charity or involves base gain, concerning alms for Masses, Ibid. Therefore, it was strictly forbidden to a priest who accepted a Mass to be celebrated with a certain alms, that he should not commit the same Mass to another, retaining a part of that same alms for himself, page 262. For priests who receive alms do not acquire them except by reason of the obligation to offer the sacrifice, as if connected with it; and therefore, by transferring the obligation to another, they also transfer the title of retaining the stipend in the same person, Ibid. It is also easily understood that those who retain a part of the stipends act against the will of the giver, who wished that the stipend, given with a view to the burden, should pass with that burden and belong to him who fulfills that burden, Ibid. The Mass concerning repetition: Canonical causes, by which a Mass can be repeated, are restricted to this, namely, that otherwise the faithful who have the right and duty to hear Mass on holy days cannot be assisted, page 343. Concerning repeated Masses, it is certain that nothing can be received from those who repeat them, unless it is permitted by Apostolic authority; but it is sometimes granted on account of the labor of celebrating the Mass or on account of a grave inconvenience, page 344. The Mass concerning reduction: The Apostolic See is not involved in settling the obligations of Masses, not only in order to preserve the will of the founders, but also in order that the founders should not be defrauded of the precious fruits of the sacrifice, page 81. Therefore, when goods of benefices, burdened with the obligations of Masses, have passed to anyone, with the authority of civil power, the burden of the Masses passes with them, and the obligation is not extinguished, except by an Apostolic indult, supported by reasonable causes, Ibid. Therefore, unless some very grave...

[*Latin ed. p. 588*]

588 It often happens that, although there is a just cause, absolution from past omissions and the reduction of obligations are not granted; thus, it

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frequently happens that the heir's poverty is not considered sufficient for obtaining this, ibid. For, when the heir accepts the inheritance, he assumes the obligation of all the burdens with which the inheritance is encumbered; and consequently, the smallness of the inheritance does not excuse him from fulfilling the obligations, because, in this case, the heir would be required to provide from his own resources, ibid. The Obligation of Masses. When the obligation of Masses is perpetual in its nature, it does not seem sufficient to simply presume its extinction, arising from a centennial period; but the extinction of the obligation must be demonstrated with clear arguments, page 224. It cannot be easily appealed to prescription for the extinction of the obligation of Masses; because prescription, which is established by human law for the tranquility of the state, cannot extend to the dead, who are considered to be outside of human jurisdiction, ibid. The Sacred Congregation has shown in numerous resolutions that prescription does not run against legacies for Masses, ibid. For, just as the affairs of minors are not subject to prescription during their minority, because minors, due to a lack of age, are not able to act, so, conversely, prescription does not run against the prayers for the dead, because, due to the lack of their earthly state, they are not able to act, ibid. Furthermore, civil laws admit prescription as a penalty for those who are negligent in asserting their rights; but no negligence can be admitted in the case of the deceased, who, being outside of human commerce, are not able to demand what is due to them, page 225. The wills of testators must be respected in all things; therefore, the suppression of legacies for the pious works of the Church is entirely disapproved of by the Holy Canons, page 312. Hence, whenever the words of a testator contain some ambiguity, Doctors indicate that a favorable interpretation should be given to the pious cause, especially if the word concerns Masses, ibid. And therefore, whatever may be the circumstances, where obligations for Masses are attached by the will of the testator, such obligations must be fulfilled, as justice and reason dictate, ibid. Option Regarding Canonries. In many Chapters, whether by privilege, by statute, or by custom, it is established that Canons have the right to choose the more lucrative benefices, whenever they become vacant, page 160. With regard to those benefices that are established by the Holy Canons, it must be observed that the Canons must maintain a certain order in exercising the right of option; and this right is granted to them not for the sake of the office itself, but for the sake of the longer service rendered to the Church, page 161. However, this right is exercised...

[*Latin ed. p. 589*]

INDEX: Concerning the time limit for accepting a benefice, it is determined by the sacred canons to be twenty days from the date of the vacancy, or rather, from the date of credible notification, as stated above. It is generally held that in matters concerning benefices, the union of the office

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and the acceptance of the benefice establishes a perpetual right. Therefore, theologians and confessors are strictly excluded from the option, because these two offices require a special aptitude and ability in the person, which also necessitates a suitable benefice. However, by a special concession of the Holy See, a theologian or confessor may accept a more lucrative benefice, provided that their offices are not thereby unduly diminished; until they attain a benefice of sufficient substance, which is clearly suited to their offices, as stated above. It seems less reasonable that theologians and confessors should be perpetually restricted to smaller benefices, while bearing a greater burden among the chapter.

Concerning the burial of members of Religious Orders: The right of burial belongs to other Orders either by a privilege enclosed within the body of the law, as Clementine Decretals 2 previously mentioned, or to others either by the communication of privileges, or by special constitutions, page 415. Since the right of burial is a privilege not so much of the Regular clergy, as of the CHURCH and the citizens, it seems to make no difference whether the conditions of the regular life are observed or not, in order to maintain such privileges, as stated above. For although these privileges were perhaps originally granted with a view to the persons, this right, as it were, inhering in the temple, remains even after an illegitimate suppression, until the privileges of such temples are abolished by ecclesiastical authority, page 416. From the jurisprudence of the Sacred Congregation, it appears that they hold that with secularization, the privileges concerning the regular life are abolished; in other matters, however, all rights, both active and passive, remain fully with the Church, as stated above.

It has been repeatedly decided by the Sacred Congregation that a parish priest has the right only to perform the parochial functions in the churches within the boundaries of his parish, which, however, do not enjoy the privilege of exemption by law, as stated above. By the law which ordered that bodies be buried in public cemeteries, the right which churches possess, both to perform funerals and to receive emoluments, was not rendered null and void, page 421. Therefore, as we have mentioned before, with the erection of cemeteries, the place of burial was only materially changed, while all the rights and customs remained intact, as stated above. Therefore, if the deposition of a body in a church has been prohibited by civil law, the funeral service and the exposition of the body with other parental acts, remain unaffected, as stated above.

[*Latin ed. p. 590*]

590 GENERAL INDEX. For indeed, public cemeteries have been substituted for the burial grounds of individual churches; so that churches which enjoy the right of burial, may exercise this right in the public cemeteries, page 422. Therefore, just as formerly, the jurisdiction of every

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parish priest ceased at the doors of the churches of Regular clergy, who possessed the right of burial, so too now, that same jurisdiction ought to cease, since nothing in the law has been changed, ibid. And therefore, when a coffin is placed at the threshold of the aforementioned church, and the last farewells are spoken, the parish priest cannot intrude upon those ministrations which are to be performed afterward concerning the body, ibid. Consequently, when bodies have passed into the jurisdiction of the Regular clergy, within their own churches, for the purpose of burial, all offices and duties, up to the public cemetery, belong to the Regulars; since the jurisdiction of the parish priest cannot revive, ibid. It follows also that no emoluments are due to the parish priests, which are given by the heirs to the priest who accompanies the body to the cemetery; and that the Regulars are not obliged to summon the parish priests to accompany such bodies to the public cemeteries, ibid. However, religious persons who accompany bodies to the public cemetery may pass through the boundaries of the parish, with a stole and a customary cross, provided that they proceed without pomp and in an orderly manner, ibid. The Parish Priest concerning distributions. From the Council of Trent, Session 22, chapter 5, during the time that the parish priest resides in and ministers to his parish, he is considered to be present, and to participate in the divine services; therefore, he is entitled to both ordinary and extraordinary distributions, page 108. For if a canon, whether present or absent due to illness, can enjoy ordinary and extraordinary distributions, and also any emoluments, there appears to be no reason why this privilege should be denied to a canon who is a parish priest, when he performs parochial duties at the proper time, ibid. Furthermore, it is not unknown that a physically absent person, for a reasonable cause, is legally considered present, and that those who neglect their duties are penalized; but how much more so will this be the case with a canon who is a parish priest, absent for the good of souls, when there is no more reasonable cause for his absence? ibid. It is deduced from natural equity itself that a contribution must be made equally for daily distributions; for it is intolerable that someone should not wish to bear the inconveniences, who does desire to enjoy the profits and advantages. The Parish Priest concerning examination. From the Decree of the Council of Trent, Session 24, chapter 18... all of which are ordered to be observed in the following examination... concerning benefices, it has its full force everywhere; so that no benefice is...

[*Latin ed. p. 591*]

INDEX: Concerning the care of souls, it cannot be obtained from anyone, unless through examination and the approval of the Ordinary. 227. Moreover, the Decree of Alexander III, in chapter 4 concerning the office of the Archdeacon, is still in force, in which it is stated that a benefice with the care of souls can be obtained solely through the approval of the Bishop:

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"We command (there, the Archdeacon is instructed) that no one presume to take charge of souls without the license and mandate of the Bishop." Ibid. Regarding the Parochial Office: Sorcery, sodomy, and fraud are such offenses in a priest that they cannot in any way be tolerated by the Ordinaries, page 507. Nevertheless, even when evidence of offenses admitted to the Ordinary exists, without a formal process, one cannot proceed to the permanent removal of the titular priest, ibid. A bad conscience and the hatred of the people are among the principal reasons for granting a resignation, ibid. A resignation, which is offered to avoid greater evils, and is accepted by the Ordinary, cannot be considered null and void, as fear in this case is external, not internal, ibid. Concerning the Parish: Parishes can be united to Chapters in two ways: namely, through a subjective union, primarily and fundamentally, or through a union which they call accessory, page 408. When the care of souls belongs to the Chapter, either by a subjective union, the Chapter cannot, by common law, be compelled to appoint perpetual vicars, but Chapter vicars, established by the Chapter itself, can exercise the actual care, ibid. Such a vicar does not exercise the parochial ministry in his own right, but in the name of the canons or the college; since the right of the parish belongs to each canon in solidum, and one is not a rector except the Chapter and the canons in general, ibid. Therefore, a Chapter possessing habitual and actual care, through a subjective union, can freely choose and remove vicars, and nothing else is required of the Ordinaries, except the confirmation of the vicars for the administration of the sacraments, p. 409. However, when a parish is united in the second way, namely, through an accessory union, according to the opinion of the Doctors, the Bishops can compel Chapters to appoint perpetual vicars; for in this case, the Chapter is not the true parson, nor does it have an immediate office of souls, ibid. Pension: The Decree concerning pensions must always be applied, when a loss or diminution of the revenues of the benefice occurs, page 560. Statutes are already in effect and are to be observed.

[*Latin ed. p. 592*]

592 INDEX: Regarding the reduction of proportional revenues for benefices and pensions, it is not permitted to revert from such a reduction. Ibid. However, if it is established that the condition of the beneficiary has improved since the time when the reduction took place, a proportional increase in the pension is also permissible, page 561. Concerning the benefice of the Masters of the Sacred Theological Faculty of Trent: When the Masters of Trent expressly mandated that a doctorate, or at least a license, be required for obtaining certain dignities and benefices, they did not intend to equate licentiates with doctors, but rather they wished that those holding such dignities should at least possess a license, if doctors were absent. Page 87. Concerning the Theological Benefice: To a Canon Theologian, the full daily distributions of all hours are to be

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granted on the day he lectures, even if he does not serve [at the altar]. Page 90. The Theologian enjoys this privilege for the entire day in which he explains the Holy Scriptures, whether he does so only in the morning or only in the evening. Ibid. The Canon Theologian is dispensed from the choir, and is considered present for the entire day in which he lectures on the Holy Scriptures, although his predecessors used this privilege only for the hour in which they lectured. Ibid. Concerning the Canon Theologian: Generally speaking, the Canon Theologian also receives extraordinary distributions for the days in which he performs his proper office, unless a capitular constitution, custom, or a specific disposition prevents it. Page 91. Transaction: Strictly speaking, a transaction signifies only that agreement by which a doubtful and controversial matter is settled, with the consent of the parties, through something given or promised, retained or relinquished. Page 439. Authors define it as a non-gratuitous agreement concerning a doubtful and controversial matter, or a dispute that is uncertain and not yet defined. Ibid. Therefore, the essential form of a transaction is that something be given or done in exchange for the remission of the dispute; however, this can be done as long as the outcome of the dispute is uncertain, but not after a judgment has been rendered on the matter. Ibid. ERRATA: Page 345, line 2, in note, column 2: "Junii" should be changed to "Iulii". Page 521, line 2: "Negative ad primam partem, affirmative ad secundam" should be changed to "Affirmative ad primam partem, negative ad secundam".

IMPRIMATUR: Fr. Vincentius M. Gatti O. P. S. P. A. Mag. Soc.

IMPRIMATUR: Iulius Lenti, Archbishop of Siden.

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